

**IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**APPEAL 23A-UI-10710-LJ-T
ADMINISTRATIVE LAW JUDGE
DECISION**

**IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

██████████
Claimant

████████████████████
Employer

APPEAL 23A-UI-10710-LJ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 12/04/22
Claimant: Respondent (4-R)**

Iowa Code § 96.5(2)a – Discharge from Employment
Iowa Admin. Code r. 871-24.32(9) – Suspension

STATEMENT OF THE CASE:

On November 15, 2023, Employer filed an appeal from the November 8, 2023 (reference 05) unemployment insurance decision that allowed benefits, determining claimant was still employed and available for work. The Unemployment Insurance Appeals Bureau mailed notice of the hearing on November 20, 2023. Administrative Law Judge Elizabeth A. Johnson held a telephonic hearing at 11:00 a.m. on Thursday, November 30, 2023. Claimant did not participate. Employer participated through Human Resources Administrator. Employer's Exhibits 1 through 8 were received and admitted into the record. The administrative law judge took official notice of the administrative record.

The Unemployment Insurance Appeals Bureau mailed a second notice of hearing on December 1, 2023. This second hearing was scheduled for 3:00 p.m. on Monday, December 11, 2023. This hearing was scheduled for the sole purpose of providing the parties proper notice that the ALJ would decide the issue of whether claimant's suspension was disqualifying. On December 11, Employer again appeared through Human Resources Administrator; Claimant again did not appear. The ALJ took no additional testimony.

ISSUE:

Was the claimant suspended from employment for disqualifying misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for Employer on June 27, 2023. He worked full-time hours as a delivery driver.

As a delivery driver, claimant was required to maintain a commercial driver's license "CDL." Drivers who hold CDLs are routinely screened for drugs, per federal rules and regulations. Claimant had previously received a positive drug screen result. On October 17, the employer sent claimant to take a follow-up drug screen in connection with that past positive result. Claimant again received a positive drug screen result. At that point, the employer placed claimant on an unpaid suspension and presented him with the option to undergo the "return-to-duty" process of receiving a substance abuse evaluation; taking any recommended actions; and

successfully completing all recommended actions before completing a drug screen, receiving a negative result, and then returning to work.

Claimant ultimately failed to follow through on the “return-to-duty” process the employer outlined. He initially informed the employer he would undergo the process to try and preserve his employment. He then reached out to the substance abuse professional (“SAP”) who would provide his initial evaluation on November 8. As of November 28, that SAP had not heard from claimant any further.

The employer discharged claimant on November 27, 2023. The Benefits Bureau has not yet held a fact-finding interview and issued a decision determining claimant’s eligibility for benefits based on that final separation from employment.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was suspended from employment due to disqualifying, job-related misconduct.

The first issue in this case is the effect of the confidentiality requirements of the federal law. The Omnibus Transportation Employee Testing Act of 1991 authorized the United States Department of Transportation (DOT) to prescribe regulations for testing of commercial motor vehicle operators. 49 USC § 31306. Congress required that the regulations provide for “the confidentiality of test results and medical information” of employees tested under the law. 49 USC § 31306(c)(7). Pursuant to this grant of rulemaking authority, the DOT established confidentiality provisions in 49 CFR 40.321 that prohibit the release of individual test results or medical information about an employee to third parties without the employee’s written consent. There is an exception, however, to that rule for administrative proceedings (e.g. unemployment compensation hearing) involving an employee who has tested positive under a DOT drug or alcohol test. 49 CFR 40.323(a)(1). The exception allows an employer to release the information to the decision maker in such a proceeding, provided the decision maker issues a binding stipulation that the information released will only be made available to the parties to the proceeding. 49 CFR 40.323(b).

Iowa Code § 22.2(1) provides: “Every person shall have the right to examine and copy a public record and to publish or otherwise disseminate a public record or the information contained in a public record.” The exhibits, decision, and audio recording in an unemployment insurance case would meet the definition of “public record” under Iowa Code § 22.1-3. Iowa Code § 17A.12(7) provides that contested case hearings “shall be open to the public.” Under Iowa Code § 96.6(3), unemployment insurance appeals hearings are to be conducted pursuant to the provisions of chapter 17A. The unemployment insurance rules provide that copies of all presiding officer decisions shall be kept on file for public inspection at the administrative office of the department of workforce development. Iowa Admin. Code r. 871-26.17(3).

The federal confidentiality laws regarding drug testing and medical information must be followed because, under the Supremacy Clause, U.S. Const., Art. VI, cl. 2, state laws that “interfere with, or are contrary to the laws of congress, made in pursuance of the constitution” are invalid. *Wisconsin Public Intervenor v. Mortier*, 501 U.S. 597, 604 (1991). In this case, the Iowa Open Records law, Iowa’s Administrative Procedure Act, and Iowa Employment Security law conflict with the federal statute and implementing regulations to the extent that Iowa law would require the release of individual test results or medical information about an employee to third parties beyond the claimant, employer, and the decision maker in this case. It would defeat the purpose of the federal law of providing confidentiality to permit the ALJ decision to disclose the

test results and related information to the public. Therefore, no identifying information is included in the body of this decision.

The next issue in this case is whether claimant is eligible for benefits based on his suspension from employment. Iowa Code section 96.5(2)(a) and (d) provide:

An individual shall be *disqualified for benefits*:

2. *Discharge* for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The disqualification shall continue until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

...

d. For the purposes of this subsection, "*misconduct*" means a deliberate act or omission by an employee that constitutes a material breach of the duties and obligations arising out of the employee's contract of employment. Misconduct is limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or even design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Misconduct by an individual includes but is not limited to all of the following:

(6) Conduct that substantially and unjustifiably endangers the personal safety of coworkers or the general public.

(11) Failure to maintain any license, registration, or certification that is reasonably required by the employer or by law, or that is a functional requirement to perform the individual's regular job duties, unless the failure is not within the control of the individual.

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982).

Iowa Admin. Code r. 871-24.32(9) provides:

(9) Suspension or disciplinary layoff. Whenever a claim is filed and the reason for the claimant's unemployment is the result of a disciplinary layoff or suspension imposed by the employer, the claimant is considered as discharged, and the issue of misconduct must be resolved. Alleged misconduct or dishonesty without corroboration is not sufficient to result in disqualification.

Section 382.501 of the Federal Motor Carrier Safety Act (FMCSA) requires the employer or designated employer representative (DER) to remove the driver from performing safety-sensitive functions.

Employees are required to be drug free in the workplace. Claimant's violation of the known work rule and DOT regulations constitutes misconduct as it presents a safety hazard to the employee and the general public and potential liability for the employer. Additionally, claimant's positive drug screen result directly resulted in him losing his CDL, and having a CDL is a requirement of his position. The employer has established claimant was suspended for disqualifying misconduct. Benefits are withheld.

Claimant has filed no weekly claims and received no benefits since his suspension on October 17, 2023. The issues of overpayment and chargeability are moot.

This matter is remanded to the Benefits Bureau to hold a fact-finding interview and issue a decision determining claimant's eligibility for benefits based on his permanent separation from employment. The employer has submitted documentation regarding the separation that is in the appeal file.

DECISION:

The November 8, 2023 (reference 05) unemployment insurance decision is modified in favor of the employer. The employer suspended claimant from employment due to job-related misconduct. Benefits are withheld until such time as the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The issues of overpayment and chargeability are moot.

REMAND: This matter is remanded to the Benefits Bureau to hold a fact-finding interview and issue a decision to determine whether claimant is eligible for benefits based on his permanent separation from employment.



Elizabeth A. Johnson
Administrative Law Judge

December 13, 2023
Decision Dated and Mailed

lj/scn

APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Iowa Employment Appeal Board
6200 Park Avenue Suite 100
Des Moines, Iowa 50321
Fax: (515)281-7191
Online: eab.iowa.gov**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf> or by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Iowa Employment Appeal Board
6200 Park Avenue Suite 100
Des Moines, Iowa 50321
Fax: (515)281-7191
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que se encuentra en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf> o comunicándose con el Tribunal de Distrito Secretario del tribunal <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.