

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

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**MICHAEL A UNGACTA**  
Claimant

**FERGUSON ENTERPRISES INC**  
Employer

**APPEAL 23A-UI-10128-DZ-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 10/01/23  
Claimant: Appellant (1)**

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Iowa Code § 96.5(2)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Michael A. Ungacta, the claimant/appellant,<sup>1</sup> appealed the Iowa Workforce Development (IWD) October 20, 2023 (reference 01) unemployment insurance (UI) decision. IWD denied Mr. Ungacta REGULAR (state) UI benefits because IWD concluded the employer discharged him from work on September 21, 2023 for violating a known company rule. On October 30, 2023 the Iowa Department of Inspections, Appeals, and Licensing (DIAL), UI Appeals Bureau mailed a notice of hearing to Mr. Ungacta and the employer for a telephone hearing scheduled for November 13, 2023.

The undersigned administrative law judge held a telephone hearing on November 13, 2023. Mr. Ungacta participated in the hearing personally. The employer participated in the hearing through Mimi Luongvan, human resources manager.

**ISSUE:**

Did the employer discharge Mr. Ungacata from employment for disqualifying, job-related misconduct?

**FINDINGS OF FACT:**

Having reviewed the evidence in the record, the administrative law judge finds: Mr. Ungacta began working for the employer in December 2019. He worked as a full-time equipment operator II. His employment ended on October 5, 2023.

On September 21, 2023, Mr. Ungacta attended a safety meeting. Mr. Ungacta had volunteered to attend the meeting to be the safety point-person on his shift. Two managers and a safety specialist smelled the smell of marijuana coming from Mr. Ugacta and they observed that his eyes were bloodshot. The managers reported the incident to Ms. Luongvan and brought Mr. Ungacta to Ms. Luongvan's office.

Ms. Luongvan also smelled the smell of marijuana coming from Mr. Ugacta and she observed that his eyes were bloodshot. Ms. Luongvan told Mr. Ungacta that the employer had

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<sup>1</sup> Claimant is the person who applied for UI benefits. Appellant is the person or employer who appealed.

reasonable suspicion that he was under the influence of marijuana and the employer wanted to conduct an oral drug test. Mr. Ungacta consented to the test and took the test. The employer sent Mr. Ungacta home on unpaid administrative leave pending the test results. The employer sent the test to its third-party test administrator.

The employer received the test results from its third-party administrator on October 5. The results showed a positive for drug use. The employer's policy authorizes the employer to test an employee if the employer has reasonable suspicion that the employee is under the influence of drugs at work. Mr. Ungacta acknowledged receiving a copy of the policy on, or about, his hire date. The employer terminated Mr. Ungacta's employment on October 5 being under the influence of marijuana at work on September 21.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the undersigned concludes the employer discharged Mr. Ungacta from employment for job-related misconduct.

Iowa Code section 96.5(2)(a) and (d) provide, in relevant part:

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 individual shall be disqualified for benefits 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 evil 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:

...

(9) Reporting to work under the influence of alcohol, illegal or nonprescribed prescription drugs, or an impairing substance in an off-label manner, or a combination of such substances, on the employer's premises in violation of the employer's employment policies, unless the individual is compelled to work by the employer outside of scheduled or on-call working hours.

Iowa Code section 96.5(14) provides:

14. Marijuana or controlled substance use in the workplace — disqualified.

- a. For purposes of this subsection, unless the context otherwise requires:
  - (1) “Controlled substance” means the same as defined in section 124.101.
  - (2) “Marijuana” means the same as defined in section 124E.2.
- b. If the department finds that the individual became separated from employment due to ingesting marijuana in the workplace, working while under the influence of marijuana, or testing positive for any other controlled substance, for which the individual did not have a current prescription or which the individual was otherwise using unlawfully, under a drug testing policy pursuant to section 730.5 or any other procedures provided by federal statutes, federal regulations, or orders issued pursuant to federal law.
- c. A disqualification under this subsection 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.

The employer has the burden of proof in establishing disqualifying job misconduct.<sup>2</sup> The issue is not whether the employer made a correct decision in separating the claimant from employment, but whether the claimant is entitled to unemployment insurance benefits.<sup>3</sup> Misconduct must be “substantial” to warrant a denial of job insurance benefits.<sup>4</sup>

The employer may establish reasonable work rules and expect employees to abide by them. In this case, the employer has presented credible evidence that Mr. Ungacta was working while under the influence of marijuana. Multiple employees observed Mr. Ungacta under the influence in the safety meeting and Ms. Luongvan separately observed Mr. Ungacta under the influence in her office. This is disqualifying misconduct. Mr. Ungacta is not eligible for UI benefits.

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<sup>2</sup> *Cosper v. Iowa Dep’t of Job Serv.*, 321 N.W.2d 6 (Iowa 1982).

<sup>3</sup> *Infante v. Iowa Dep’t of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984).

<sup>4</sup> *Newman v. Iowa Dep’t of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984).

**DECISION:**

The October 20, 2023 (reference 01) UI decision is AFFIRMED. The employer discharged Mr. Ungacta from employment for disqualifying, job-related misconduct. Mr. Ungacta is not eligible for UI benefits until he has worked in and been paid wages for insured work equal to ten times his weekly UI benefit amount, as long as no other decision denies him UI benefits.



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Daniel Zeno  
Administrative Law Judge

November 15, 2023  
Decision Dated and Mailed

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**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:

**Employment Appeal Board  
6200 Park Avenue Suite 100  
Des Moines IA 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:

**Employment Appeal Board  
6200 Park Avenue Suite 100  
Des Moines IA 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 adquiera 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.