

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

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**DUSTIN R BERG**  
Claimant

**NORTHWEST IOWA HOSPITAL CORP**  
Employer

**APPEAL 24A-UI-07758-PT  
ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 08/11/24  
Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

The claimant, Dustin Berg, filed an appeal from a decision of a representative dated August 27, 2024, (reference 01) that held the claimant ineligible for unemployment insurance benefits after a separation from employment. After due notice, a hearing was held in Sioux City, Iowa on September 19, 2024. The claimant participated personally. The employer participated through Employee Relations Partner Brandon Bybee. The Employer's Exhibit 1 was admitted into evidence. The administrative law judge took official notice of the administrative record.

**ISSUE:**

Whether the claimant was discharged for disqualifying, job-related misconduct.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: In early-October 2023, the claimant applied for an electrician position with Northwest Iowa Hospital Corp. The electrician position for which the claimant applied required all employees to have an electrical journeyman license within six months of hire. The claimant did not possess an electrical journeyman license. However, whether intentionally or by mistake, the claimant submitted a resume to the employer stating that he had an electrical journeyman license. Because the employer believed the claimant already possessed an electrical journeyman license, during the interview for the position, the interviewer discussed the need for the claimant to maintain a valid, unencumbered electrical journeyman license as a condition of employment.

The employer maintains a policy which prohibits misrepresentations, falsifications, or material omissions in the employment application or hiring process. The policy warns employees that violations of the policy can result in termination of employment. The claimant was aware of the policy.

At some point during the claimant's employment, the claimant informed his manager that he had completed the four-year journeyman apprenticeship program, but that he had not yet passed the examination to earn his electrical journeyman license. From the testimony at hearing, it does not

appear that the claimant's manager notified the director or anyone in the employer's human resources department that the claimant did not possess an electrical journeyman license.

Approximately two-months into his employment, the claimant took the Iowa examination for the electrical journeyman license. However, the claimant did not pass. Approximately six-months later, the claimant took the Iowa examination again. But he again failed to pass.

Because the claimant had failed to pass the Iowa examination twice, in July 2024, the claimant applied to take the examination in Nebraska. Sometime in early-August, the State of Nebraska contacted the employer to verify the claimant's employment, at which point, the employer learned that the claimant did not possess an electrical journeyman license. A human resources representative began an investigation by first pulling the resume the claimant had submitted and confirming that the resume stated that the claimant possessed an electrical journeyman license. The representative then asked the claimant's director whether he believed the claimant had an electrical journeyman license. The director confirmed that it was his understanding the claimant possessed an electrical journeyman license.

On August 8, 2024, the HR representative called the claimant into a meeting and asked the claimant whether he had stated on his resume that he possessed an electrical journeyman license. The claimant denied having stated that on his resume. At the end of the meeting, the HR representative informed the claimant that his employment was being terminated effective immediately for falsification of his employment application and dishonesty.

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

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct. Benefits are denied.

Iowa Code section 96.5(2)a provides:

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.

Iowa Code section 96.5(2)d(1), (2) and (14) provide:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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

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:

...

(1) Material falsification of the individual's employment application.

...

(2) Knowing violation of a reasonable and uniformly enforced rule of an employer.

...

(11) Failure to maintain any licenses, 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). The issue is not whether the employer made a correct decision in separating the claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Bd.*, 616 N.W.2d 661 (Iowa 2000).

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

The findings of fact show how I have resolved the disputed factual issues in this case. I assessed the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using my own common sense and experience. I find the employer's testimony concerning the investigation and the representations the claimant made about possessing an electrical journeyman license when hired to be more consistent with other believable evidence.

At the hearing, the claimant testified that the first resume he provided to the employer was altered when he uploaded it to Indeed.com's resume builder to incorrectly state that he possessed an electrical journeyman's license. The claimant further stated that during his interview, he supplied the employer with a correct resume and that, during the interview, he informed the employer that he did not in fact possess an electrical journeyman license. The

administrative law judge finds the claimant's testimony dubious for three reasons. First, the claimant's explanation conflicts with his director's belief that the claimant possessed an electrical journeyman license, and the director was one of the individuals who interviewed the claimant. Second, the claimant's purported "second resume" was not part of the claimant's application records maintained by the employer. Finally, the authenticity of the second resume that the claimant brought to the hearing is suspect because its formatting—which the claimant stated he drafted in Microsoft Word—is nearly identical to the formatting of the first resume, which the claimant alleges was changed by Indeed.com's resume builder. For these reasons, the undersigned has given greater weight to the employer's version of events than to the claimant's version of events.

The employer has presented substantial and credible evidence that the claimant provided the employer a falsified job application representing that the claimant possessed an electrical journeyman license when, in fact, the claimant did not possess such a license. A work rule requiring honesty is not necessary; honesty is a reasonable, commonly accepted duty owed to the employer. The claimant's misconduct in this case was substantial. An employer is entitled to expect honesty from its employees and must be able to trust its employees to do their jobs. The claimant intentionally breached that duty of honesty.

Additionally, the requirement that the claimant possess and maintain a valid, unencumbered electrical journeyman license was a known condition of the claimant's employment. Repeated traffic violations rendering a claimant uninsurable can constitute job misconduct even if the traffic citations were received on the claimant's own time and in her own vehicle. *Cook v. Iowa Dep't of Job Serv.*, 299 N.W.2d 698 (Iowa 1980). The employer is not obligated to accommodate the claimant during a license suspension or revocation period, but does have a legal obligation to abide by state and federal statutes and regulations and not allow unlicensed individuals to perform electrical work. While the claimant's failure to obtain his license was not related to the claimant's job performance, the claimant's failure to obtain the license as a known condition of the employment was misconduct sufficient to warrant a denial of benefits. The employer has carried its burden of establishing that the claimant engaged in disqualifying misconduct. Benefits are denied.

**DECISION:**

The August 27, 2024, (reference 01) unemployment insurance decision is affirmed. The claimant was discharged for disqualifying, job-related misconduct. Unemployment insurance benefits shall be withheld until the claimant has worked in and been paid wages for insured work equal to ten times the claimant's weekly benefit amount after his August 8, 2024, separation date, provided the claimant is otherwise eligible.



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Patrick B. Thomas  
Administrative Law Judge

September 27, 2024  
Decision Dated and Mailed

pbt/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](http://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](http://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.