

**IOWA DEPARTMENT OF INSPECTIONS AND APPEALS
ADMINISTRATIVE HEARINGS DIVISION, UI APPEALS BUREAU**

JORDAN HARRIS

Claimant

APPEAL 23A-UI-03245-LJ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

REMEDY INTELLIGENT STAFFING INC

Employer

OC: 02/26/23

Claimant: Respondent (2)

Iowa Code § 96.5(2)a – Discharge from Employment

Iowa Code § 96.3(7) – Recovery of Benefit Overpayment

Iowa Admin. Code r. 871-24.10 – Employer Participation in Fact-Finding Interview

STATEMENT OF THE CASE:

On March 27, 2023, employer Remedy Intelligent Staffing Inc. filed an appeal from the March 15, 2023 (reference 01) unemployment insurance decision that allowed benefits after a February 14, 2023 separation from employment. The parties were properly notified of the hearing. A telephonic hearing was held at 8:00 a.m. on Wednesday, April 12, 2023. Claimant Jordan Harris did not appear for the hearing and did not participate. Employer Remedy Intelligent Staffing Inc. participated through JT Breslin, Area Manager; and John Metz, Site Manager. Employer's Exhibits 1, 2, and 3 were received and admitted into the record. The administrative law judge took official notice of the administrative record.

ISSUES:

Was the claimant discharged from employment for disqualifying misconduct?

Was the claimant overpaid benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for Remedy Intelligent Staffing Inc. on August 1, 2022. Most recently, she worked full-time hours as a shift supervisor at a client site. Claimant's employment ended on February 16, 2023, when the employer discharged her for disrespectful, insubordinate behavior toward management.

Claimant was experiencing frustration at work, due to conflict with a coworker and the effect the coworker's absences were having on her schedule. Claimant and this coworker were both shift supervisors. The other supervisor had numerous absences from work and would frequently call in sick. These absences required claimant and other shift supervisors to cover for the coworker. Often, claimant would not know she needed to cover for the coworker until she was already at work and well into her shift; claimant would have to stay and work additional hours on top of her full work day. Claimant lodged frequent complaints with Metz and Breslin about this situation,

and the employer had adjusted all employees' schedules so claimant and the coworker had no interaction with one another.

On February 14, claimant had a phone call with Breslin regarding recent issues, including stating she had decided she would no longer stay and cover for her coworker. (Breslin testimony, Exhibit 3) During that call, claimant was behaving in an agitated and erratic manner. Claimant was upset, jumping from topic to topic rapidly, and raising her voice to Breslin. She rapidly fired questions at Breslin during the call, but she would not give him any opportunity to answer. Claimant accused the employer of treating her differently than others, not supporting her, and not helping her. When Breslin told claimant that if she wanted answers to any of her questions, she would need to please stop talking, she hung up on him. That same day, claimant had texted Breslin that all the problems at work would be solved because she would "crash into a ditch on my way home [emoji] [emoji] bye". (Exhibit 3, page 24)

After that call, the employer suspended claimant and discharged her two days later. Claimant had behaved similarly in the past, but never to the extreme level that she reached on February 14. Metz had warned claimant about the consequences of not meeting the employer's expectations. Claimant had received an employment handbook and was aware of the policies and expectations. She knew her job was in jeopardy at the time of discharge.

The administrative record reflects that claimant has received no unemployment benefits since filing a claim with an effective date of February 26, 2023. The claimant's claim is currently locked, as claimant has not yet provided documentation to Iowa Workforce Development verifying her identity and her authorization to work.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for disqualifying, job-related misconduct. Benefits are withheld.

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) provides, in relevant part:

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:

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:

...

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

Iowa Admin. Code r. 871-24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being 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. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

The Iowa Supreme Court has held this definition accurately reflects the intent of the legislature.¹ The employer has the burden of proof in establishing disqualifying job misconduct.² The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits.³

Misconduct must be "substantial" to warrant a denial of job insurance benefits.⁴ When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature.⁵ Poor work performance is not misconduct in the absence of evidence of intent.⁶ Generally, continued refusal to follow reasonable instructions constitutes misconduct.⁷ "[W]illful misconduct can be established where an employee manifests an intent to disobey the

¹ *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

² *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982).

³ *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984).

⁴ *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984).

⁵ *Id.*

⁶ *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988).

⁷ *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990).

reasonable instructions of his employer."⁸ In insubordination cases, the reasonableness of the employer's demand in light of the circumstances must be evaluated, along with the worker's reason for non-compliance.⁹ The key to such cases is not the worker's subjective point of view but "what a reasonable person would have believed under the circumstances."¹⁰

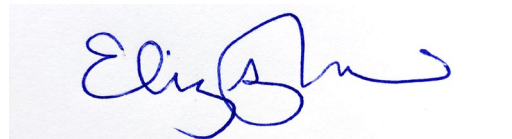
Here, the employer has established that the final incident involved a discussion between Breslin and claimant regarding claimant stating she would no longer be performing one of her job duties: covering for a coworker. She was aware at the time that her job was in jeopardy, and she knew that behaving disrespectfully or insubordinately could lead to her discharge. During this discussion, claimant was belligerent, erratic, and wholly unprofessional. When Breslin asked her to give him an opportunity to speak, rather than pause and use that moment to gather her composure, she doubled down on her poor behavior and hung up on him. The employer has met the burden of proof to establish that the claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning. Benefits are withheld.

As the claimant has received no benefits since the separation, the issues of overpayment and chargeability are moot at this time.

DECISION:

The March 15, 2023 (reference 01) unemployment insurance decision is reversed. Claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

The issues of overpayment and chargeability are moot.



Elizabeth A. Johnson
Administrative Law Judge

April 14, 2023
Decision Dated and Mailed

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⁸ *Myers v. IDJS*, 373 N.W.2d 507, 510 (Iowa 1983) (quoting *Sturniolo v. Commonwealth, Unemployment Compensation Bd. of Review*, 19 Cmwlt. 475, 338 A.2d 794, 796 (1975)); *Pierce v. IDJS*, 425 N.W.2d 679, 680 (Iowa Ct. App. 1988).

⁹ See *Endicott v. Iowa Department of Job Service*, 367 N.W.2d 300 (Iowa Ct. App. 1985).

¹⁰ *Aalbers v. Iowa Department of Job Service*, 431 N.W.2d 330, 337 (Iowa 1988); accord *O'Brien v. EAB*, 494 N.W.2d 660 (Iowa 1993)(objective good faith is test in quits for good cause).

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
4th Floor – Lucas Building
Des Moines, Iowa 50319
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
4th Floor – Lucas Building
Des Moines, Iowa 50319
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.