

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

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**ANNE M IRLBECK**  
Claimant

**CARROLL-KUEMPER**  
Employer

**APPEAL 25A-UI-01252-SN-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 01/12/25**  
**Claimant: Respondent (1)**

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Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Admin. Code r. 871-24.32(1)a – Discharge for Misconduct  
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment  
Iowa Admin. Code r. 871-24.10 – Recovery of Benefit Overpayment

**STATEMENT OF THE CASE:**

The employer, Carroll-Kuemper, filed an appeal from the February 4, 2025, (reference 01) unemployment insurance decision granting benefits based upon the determination the claimant was discharged, but misconduct was not shown.

The parties were properly notified of the hearing. A telephone hearing was held on March 4, 2025, at 1:00 p.m. The claimant, Anne M. Irlbeck, participated and testified. The claimant's husband, Glenn Irlbeck, was present to provide support. Kelsea M. Hawley, attorney-at-law, was present to observe the hearing. The claimant was represented by attorney-at-law, Eric Neu. The employer participated through President John Steffes, Principal Kathy Milligan, and Business Manager Chris Collison.

Exhibits 1 and 2 were received into the record. This administrative law judge took official notice of the administrative records.

**ISSUES:**

Was the claimant's separation disqualifying?

Whether the claimant has been overpaid benefits? Whether the claimant is excused from repayment of benefits due to the employer's non-participation?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds:

The claimant worked as a full time administrative assistant from August 1, 2004, until she separated from employment on January 13, 2025, when she was terminated.

The employer has a human resources manual and policies handbook. It states that when an employee engages in misconduct such as theft, that they can be immediately terminated without warning. The claimant acknowledged receipt of the human resource manual and policies handbook.

On December 3, 2024, the US Postal Service delivered a birthday present that the claimant had bought for her grandson to Kuemper Catholic Middle School. The claimant ordered the package to her place of employment because she lives in a rural area and mail deliveries there are not as consistent. The claimant placed this package in the closet behind her desk in the office.

On December 9, 2024, the US Postal Service delivered two packages to Kuemper Catholic Middle School. One of those packages was a box of caramels that one of the teachers had been expecting.

On December 10, 2024, the claimant brought these packages back into the building to the office as she typically did with packages delivered to the building. This office is not locked and is accessible to just about everyone in the school. While the claimant was back in the office, she noticed her grandson's Christmas present and left the building within a few moments back through the same entrance she came in.

On December 13, 2024, the teacher who ordered the caramels sent out an email both to staff at Kuemper Catholic Middle School asking if they were aware of what happened to the box of caramels. The claimant did not answer this email because she did not remember taking the package back into the office.

On December 16, 2024, this teacher sent an email to the entire school system's staff asking the same question. The claimant did not answer this email because she had not grasped that this could have been a box she brought in almost a week earlier.

That same day, Principal Kathy Milligan returned from vacation and became aware of the teacher's concern about the missing caramels. She asked the claimant if she had seen the package several times. The claimant said she did not know about any packages being delivered that matched that description because she did not remember it. The claimant was unaware of how significant the missing box of caramels would become.

On January 13, 2025, the claimant was questioned by the local police about stealing the package after it reviewed camera footage of her leaving with her grandson's Christmas present. The claimant tried to explain that it was not the package in question to the police. The police booked the claimant. The employer accepted the local police department's findings and terminated the claimant for stealing the package of caramels. The claimant was then escorted back to Kuemper Catholic Middle School to retrieve her belongings.

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

The administrative law judge concludes the employer has not met its burden to show the claimant was terminated due to disqualifying misconduct. Benefits are granted, provided she is otherwise eligible for benefits.

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 Admin. Code r. 871-24.24(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined in Iowa Code section 96.5(2) "d."

Iowa Code section 96.5(2)b, c and d 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:

b. Provided further, if gross misconduct is established, the department shall cancel the individual's wage credits earned, prior to the date of discharge, from all employers.

c. Gross misconduct is deemed to have occurred after a claimant loses employment as a result of an act constituting an indictable offense in connection with the claimant's employment, provided the claimant is duly convicted thereof or has signed a statement admitting the commission of such an act. Determinations regarding a benefit claim may be redetermined within five years from the effective date of the claim. Any benefits paid to a claimant prior to a determination that the claimant has lost employment as a result of such act shall not be considered to have been accepted by the claimant in good faith.

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.
- (3) Intentional damage of an employer's property.
- (4) Consumption of alcohol, illegal or nonprescribed prescription drugs, or an impairing substance in a manner not directed by the manufacturer, or a combination of such substances, on the employer's premises in violation of the employer's employment policies.
- (5) 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.
- (6) Conduct that substantially and unjustifiably endangers the personal safety of coworkers or the general public.
- (7) Incarceration for an act for which one could reasonably expect to be incarcerated that result in missing work.
- (8) Incarceration as a result of a misdemeanor or felony conviction by a court of competent jurisdiction.
- (9) Excessive unexcused tardiness or absenteeism.
- (10) Falsification of any work-related report, task, or job that could expose the employer or coworkers to legal liability or sanction for violation of health or safety laws.
- (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.
- (12) Conduct that is libelous or slanderous toward an employer or an employee of the employer if such conduct is not protected under state or federal law.
- (13) Theft of an employer or coworker's funds or property.
- (14) Intentional misrepresentation of time worked or work carried out that results in the individual receiving unearned wages or unearned benefits.

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 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). The Iowa Court of Appeals found substantial evidence of misconduct in testimony that the claimant worked slower than he was capable of working and would temporarily and briefly improve following oral reprimands. *Sellers v. Emp't Appeal Bd.*, 531 N.W.2d 645 (Iowa Ct. App.

1995). Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990). Misconduct must be “substantial” to warrant a denial of job insurance benefits. *Newman v. Iowa Dep’t of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp’t Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988).

The decision in this case rests, at least in part, on the credibility of the witnesses. 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.*

After assessing the credibility of the witnesses who testified during the hearing, reviewing the exhibits submitted by the employer, considering the applicable factors listed above, and using his own common sense and experience, the administrative law judge finds the claimant’s version of events to be more credible than the employer’s recollection of those events for the following reasons:

First, the claimant was aware that there were cameras in the entrance of the building. It is implausible that the claimant would walk back out through the same entrance within moments of retrieving mail simply to steal a box of candies.

Second, the box she was seen walking out with does not appear to have the same dimensions or the same orientation as the one she is walking in with. While it is difficult to know for sure from the angle, the box she retrieved from the entryway on December 10, 2024 appears to be just long enough to go across her chest. The one she is seen walking out with moments later has a vertical orientation and is a few inches longer.

Third, the employer’s witnesses contend that these boxes are the same one. But these witnesses do not have any personal knowledge or experience with seeing the box of caramels up close to know. They are in no better position than this administrative law judge to know whether they are the same brown non-descript box.

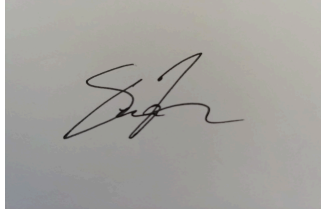
Taken together, this administrative law judge finds the claimant’s description of events more plausible than the employer’s contention that she decided to steal a box of caramels immediately after it was delivered to her place of employment.

Theft from an employer is generally considered disqualifying misconduct. See Iowa Code section 96.5(2)d(13) (stating that theft from an employer is disqualifying misconduct). See also *Ringland Johnson, Inc. v. Hunecke*, 585 N.W.2d 269, 272 (Iowa 1998).

In this case, the employer has not met its burden of proof to show the claimant stole the box of caramels that led to her being discharged. Benefits are granted, provided the claimant is otherwise eligible for benefits.

**DECISION:**

The February 4, 2025, (reference 01) unemployment insurance decision is AFFIRMED. The employer has not met its burden to show the claimant was terminated due to work-related misconduct. Benefits are granted, provided the claimant is otherwise eligible for benefits.

A rectangular box containing a handwritten signature in black ink. The signature is cursive and appears to read 'Sean M. Nelson'.

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Sean M. Nelson  
Administrative Law Judge II  
Iowa Department of Inspections, Appeals, & Licensing  
Administrative Hearings Division – UI Appeals Bureau

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March 10, 2025  
Decision Dated and Mailed

smn/rvs

**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, 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:

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