

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

BRITTANY S BAILEY
Claimant

APPEAL 24A-UI-04238-CS-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

REM IOWA COMMUNITY SERVICES INC
Employer

**OC: 03/17/24
Claimant: Respondent (1)**

Iowa Code §96.5(2)a-Discharge/Misconduct
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

STATEMENT OF THE CASE:

On April 29, 2024, the employer/appellant filed an appeal from the April 17, 2024, (reference 01) unemployment insurance decision that allowed benefit based on claimant being dismissed on March 14, 2024. The Iowa Workforce Development representative determined there was no evidence of willful or deliberate misconduct. The parties were properly notified about the hearing. A telephone hearing was held on May 14, 2024. The claimant participated. The employer participated through hearing representative, Mary Kozlowski-Vought, and Program Director, Natalie Deanda. Administrative notice was taken of claimant's unemployment insurance benefits records, including DBRO and the fact-finding documents. Administrative notice was taken of Scott County Case AGCR437165.

ISSUES:

- I. Was the separation a layoff, discharge for misconduct, or voluntary quit without good cause?
- II. Is the claimant overpaid benefits?
- III. Should the claimant repay benefits?
- IV. Should the employer be charged due to employer participation in fact finding?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on October 8, 2014. Claimant last worked in a PRN status as a direct support professional. Due to the hours available the claimant was working part-time/full time hours.

The employer has the following policies:

- Pg. 51- "visitors, unidentified, unwelcome or unexpected visitors can be disruptive to the workplace and can even pose a security problem because of the nature of the business. We must limit access to our worksite and offices to visitors who have a clear business reason for being there, such as coworkers, guardians, licensing inspectors, and vendors, unless otherwise directed. Employees must have advance approval to have a visitor on company premises or on site during a company activity or in a place where the individuals we serve live. In each case the visitor must be accompanied by an employee at all times."
- Pg. 47- "Criminal Violations-our employees are expected to follow rules of conduct that will protect the interest and safety of the individuals we support, other employees, and the company. In the event you are convicted of violating the law you should contact your supervisor immediately. A determination of whether a continuation of your employment as appropriate will be made by your supervisor, other members of management, and human resources.
- Pg. 56- "Compliance with Applicable Laws -the company intends to comply with all applicable state and federal law. Similarly we expect you to comply with all the laws that apply to your job as a condition of your continued employment. The EIG (employment information guide) and applicable federal, state, local laws, in so far as there is or may appear to be a conflict between this and the EIG and applicable law, the law will take precedence and the provision in question will be interpreted and applied in a way that conforms to the law."

The claimant was aware of these policies and signed an acknowledgement of these policies on October 8, 2014.

The claimant worked in a house that supported a small group of mentally and physically disabled adult individuals. The home the claimant worked in was a total care home that had dependents that required the use of wheelchairs and walkers. In order to come into the home a visitor would need to be let in or have a code that would unlock the door.

The claimant has a child with Emanuel Long. In the early morning hours of March 4, 2024, the claimant was working at the total care home. Mr. Long unexpectedly came to the home. Mr. Long was aware where the claimant worked due to previously dropping the claimant off for work.

The claimant opened the door to see why Mr. Long was at her work. The claimant was concerned that there was something wrong with their child. Mr. Long denied that it was about their child and told her he was in trouble with the police. The claimant grabbed him and tried to pull him out of the house. Mr. Long pushed past the claimant and entered the home. The claimant told Mr. Long that he needed to leave and that he could not be at the home or she would lose her job. At the time of the incident the residents were in their rooms with their doors closed.

Within three minutes the police officer arrived at the home looking for Mr. Long. The claimant was outside of the home with the police officer. The police officer asked if Mr. Long was present and the claimant told them he was in there and they could search the home to look for Mr. Long. The claimant tried calling her supervisor but her supervisor did not answer. The claimant spoke to the police officer and told them that she needed to retrieve the number for On-Call. On-Call is someone that assists workers if they are in a situation and need assistance. The claimant told the officer she needed to go to the closet where the On-Call information was located so she could call them for assistance. The police did not allow the claimant to enter the home to retrieve the number to call On-Call for assistance. The police officer asked for information from the claimant but she was unable to provide the requested information because it was located in the home that she was not allowed to enter. The officer grabbed the claimant's arm and handcuffed her and put her in the back of the police car and took her from the site. Mr. Long was found in the home and arrested.

Criminal charges were issued against the claimant as a result of this incident. The claimant was charged with the aggravated misdemeanor of accessory after the fact. (Scott County Case AGCR437165). The claimant pleaded not guilty to these charges. The criminal case is still pending and has not been resolved.

The claimant was placed on administrative leave due to the incident and the subsequent charges. The employer discharged the claimant on March 13, 2024. The claimant did not have any prior verbal or written warnings for violating these policies.

The claimant filed for benefits with an effective date of March 17, 2024. The claimant's gross weekly benefit amount is \$518.00. (DBRO). The claimant began receiving benefits April 27, 2024 and has received them through May 11, 2024. (DBRO). The claimant has received three weeks of benefits worth a gross total of \$1,554.00. (DBRO).

The employer submitted a written statement to the Iowa Workforce Development for the fact-finding interview. The written statement did not provide sufficient details regarding the final incident. (Fact-finding Documents). The written statement did not provide contact information of a witness with first-hand knowledge of the final incident. (Fact-finding Documents). The employer did not participate in the fact-finding phone call.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

Iowa Code section 96.5(2)a 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:

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 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.

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.

Iowa Admin. Code r. 871-24.32(4) provides:

(4) Report required. The claimant's statement and employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

Iowa Admin. Code r.871-24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

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 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). "Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of benefits." *Lee v. Employment Appeal Bd.*, 616 N.W.2d 661, 665 (Iowa 2000).

In an at-will employment environment an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy. However, if the employer fails to meet its burden of proof to establish job related misconduct as the reason for the separation it incurs potential liability for unemployment insurance benefits related to that separation. A

determination as to whether an employee's act is misconduct does not rest solely on the interpretation or application of the employer's policy or rule. A violation is not necessarily disqualifying misconduct even if the employer was fully within its rights to impose discipline up to or including discharge for the incident under its policy.

The employer has not established that the claimant willfully disregarded their interest. Based on the evidence presented at this hearing, the administrative law judge finds the claimant was discharged for an isolated incident of negligence. The claimant opened the door to her child's father out of concern for her child. When it became clear that Mr. Long was not there due to her child, the claimant told him to leave. Mr. Long refused to leave and pushed past the claimant and entered the home. The claimant was unaware at the time she opened the door that Mr. Long was being pursued by the police. The police arrived at the residence within a few minutes of Mr. Long arrival. The claimant attempted to cooperate with the police but was not able to provide them the information they needed because she was not allowed to enter the home where the information was located. The claimant attempted to involve her supervisor in the situation but the supervisor did not answer her phone call.

"[M]ere negligence is not enough to constitute misconduct." *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 666 (Iowa 2000). A claimant will not be disqualified if the employer shows only "inadvertencies or ordinary negligence in isolated instances." 871 IAC 24.32(1)(a). When looking at an alleged pattern of negligence, previous incidents are considered when deciding whether a "degree of recurrence" indicates culpability. Claimant was careless, but the carelessness does not indicate "such degree of recurrence as to manifest equal culpability, wrongful intent or evil design" such that it could accurately be called misconduct. Iowa Admin. Code r. 871-24.32(1)(a); *Greenwell v. Emp't Appeal Bd.*, No. 15-0154 (Iowa Ct. App. Mar. 23, 2016). Ordinary negligence is all that is proven here.

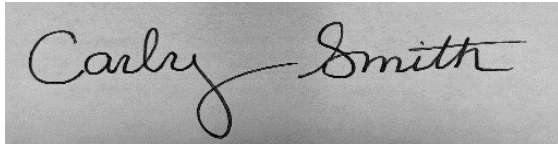
Furthermore, the claimant cannot be disqualified from unemployment benefits for job-related misconduct due to the criminal charges because the claimant has not been convicted. See Iowa Admin. r. 871-24.32(8). Because the employer has failed to establish disqualifying misconduct, benefits are allowed, provided the claimant is otherwise eligible.

Since the claimant is eligible for benefits, the issue of whether the claimant is overpaid benefits and whether the employer participated in the fact-finding interview is moot.

DECISION:

The April 17, 2024 (reference 01) unemployment insurance decision is AFFIRMED. The claimant was discharged from employment on March 13, 2024 for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible. The employer's account is subject to charge.

The issues of whether the claimant is overpaid benefits and whether the employer participated in the fact-finding interview are moot.

A rectangular box containing a handwritten signature in black ink. The signature reads "Carly Smith" in a cursive script.

Carly Smith
Administrative Law Judge

May 16, 2024
Decision Dated and Mailed

cs/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:

**Employment Appeal Board
6200 Park Ave 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:

**Employment Appeal Board
6200 Park Ave 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 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.