

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

EDDIE R SCHULTZ
Claimant

HY-VEE INC
Employer

APPEAL 24A-UI-02003-DS-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 01/14/24
Claimant: Appellant (2)**

Iowa Code § 96.5(2)a – Discharge

STATEMENT OF THE CASE:

On February 19, 2024, the claimant filed an appeal from the unemployment insurance decision dated February 12, 2024, (Reference 02) that denied benefits. Notice of hearing was mailed to the parties' last known addresses of record for a telephone hearing to be held at 11:00 a.m. on April 10, 2024. The claimant participated personally and was represented by Attorney Marlon Mormann. The employer participated through Alice Thatch, Hearing Representative with Corporate Cost Control, Todd Huebner, former Assistant Transportation Manager, Jamie Renkin, Director of Human Resources, and Darrell Short, Director of Transportation. Employer's Exhibits E1-E15 and Claimant's Exhibits A-O were admitted to the record. The administrative law judge took notice of the administrative record.

ISSUE:

Was the claimant discharged from the employment for disqualifying job-related misconduct?

FINDINGS OF FACT:

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

The claimant worked as a full-time Truck Driver for this employer from August 4, 1997, until January 9, 2024, when he was discharged by the employer. The claimant's last day of work was January 5, 2024. On January 4, 2024, the claimant took a trip to Dubuque for the employer. The claimant spent the night at the destination and returned to the employer's facilities the next day. The employer questioned the need for the overnight stay, and so began to investigate the claimant's Driver Log. The employer uses an electronic Driver Log to track the status and activities of drivers throughout the day. The employer determined that the claimant had used the "Yard Move" status on his Driver Log at times the employer deemed to be inappropriate. This status is intended to indicate that the driver is moving the vehicle around a location as opposed to being parked or driving the vehicle on a roadway. The employer does not intend that this status be used at its stores or on public roadways. Upon examining the claimant's Driver Log, the employer found that he had used the "Yard Move" status on November 14, 2024 at a truck stop, and November 29, 2024, December 5, 2024, and December 27, 2024, at Hy-Vee Stores. The employer has a definition for the "Yard Move" status that indicates that it is not to be used "at Hy-Vee stores or on public roadways." (Employer's Exhibit E10) The claimant considered the

loading area at the private stores to be inaccessible to the public and therefore not included in the definition. Further, the claimant did not consider a truck stop to be part of a public roadway. The employer deemed these four incidents to constitute falsification of the claimant's Driver Log. As a result, the employer discharged the claimant from the employment on January 9, 2024.

REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code § 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. 871-24.32(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 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). What constitutes misconduct justifying suspension of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions.

It is the duty of the administrative law judge, as the trier of fact, 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 evidence you believe; 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 employer has not met its burden and has not demonstrated that the claimant engaged in any volitional misconduct. The claimant had more than 26 years of driving experience with this employer and had a different understanding than the employer of the scenarios in which a Yard Move status was allowable. The employer testified that the claimant could have theoretically gained an advantage in adding driving time to his log by placing himself in Yard Move status in these situations. The claimant credibly testified that he believed he used the status appropriately. The claimant received no warnings for these four incidents which occurred over a period of two months. Rather, the employer discharged the claimant from the employment upon their discovery. While the employer may be within its rights to discharge the claimant, there is no current act in the record that would constitute disqualifying misconduct in the context of eligibility for unemployment insurance benefits, and the employer has not met its burden to show that the claimant engaged in disqualifying misconduct. Benefits are allowed.

DECISION:

The decision dated February 12, 2024, (Reference 02) that denied unemployment insurance benefits is REVERSED. The claimant was discharged from the employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.



David J. Steen
Administrative Law Judge

April 19, 2024
Decision Dated and Mailed

DJS/jkb

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**

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. *There is no filing fee to file an appeal with the Employment Appeal Board.*

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 file a petition for judicial review in district court.

2. If you do not file 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 www.iowacourts.gov/efile. *There may be a filing fee to file the petition in District Court.*

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**

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. *No hay tarifa de presentación para presentar una apelación ante la Junta de Apelación de Empleo.*

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 no presenta una apelación de la decisión del juez ante la Junta de Apelación de Empleo dentro de los quince (15) días, la decisión se convierte en una acción final de la agencia y tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días. Puede encontrar información adicional sobre cómo presentar una petición en www.iowacourts.gov/efile. *Puede haber una tarifa de presentación para presentar la petición en el Tribunal de Distrito.*

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.