

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

MICHAEL BAYUS
Claimant

EXAMINETICS INC
Employer

APPEAL 24A-UI-03791-DZ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 03/10/24
Claimant: Respondent (2)**

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

STATEMENT OF THE CASE:

Examinetics Inc, the employer/appellant,¹ appealed the Iowa Workforce Development (IWD) March 29, 2024 (reference 01) unemployment insurance (UI) decision. IWD found Mr. Bayus eligible for REGULAR (state) UI benefits because IWD concluded the employer dismissed him from employment on March 6, 2024 for a reason that did not disqualify him from receiving UI benefits. On April 16, 2024, the Iowa Department of Inspections, Appeals, and Licensing (DIAL), UI Appeals Bureau mailed a notice of hearing to the employer and Mr. Bayus for a telephone hearing scheduled for May 1, 2024.

The administrative law judge held a telephone hearing on May 1, 2024. The employer participated in the hearing through Nancy Burford, vice president of human resources. Mr. Bayus did not participate in the hearing. The administrative law judge took official notice of the administrative record.

The administrative law judge concludes the employer appealed on time, Mr. Bayus is not eligible for UI benefits because the employer discharged him for disqualifying, job-related misconduct, IWD overpaid Mr. Bayus \$4,074 in UI benefits, but Mr. Bayus does not have to repay these benefits back to IWD and the employer's account is relieved of charges.

ISSUES:

Did the employer appeal on time?

Did the employer discharge Mr. Bayus from employment for disqualifying job-related misconduct?

Did IWD overpay Mr. Bayus UI benefits?

If so, should he repay the benefits?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: IWD mailed the March 29, 2024 (reference 01) UI decision to the employer at its correct mailing address. The UI

¹ Appellant is the person or employer who appealed.

decision states that it becomes final unless an appeal is postmarked or received by the IWD Appeals Section by Monday, April 8, 2024.

The employer received the decision in the mail on April 11, 2024. The employer appealed online on April 12, 2024. The DIAL, UI Appeals Bureau received the appeal the same day.

The administrative law judge further finds: Mr. Bayus began working for the employer on January 4, 2015. He worked as a full-time field support technician in the employer's information technology (IT) group. His employment ended on March 6, 2024.

Mr. Bayus was an hourly employee and he worked remote the entire time he worked for the employer. The employer's policy provides that employees are to accurately report the time they worked on their timecard. The policy further provides that an employee who violates the policy is subject to discipline by the employer up to, and including, the employer terminating their employment.

Mr. Bayus submitted his timecard for the pay period February 19, 2024 – March 1, 2024 to his manager, the IT group director. The manager reviewed his timecard and noticed differences between what Mr. Bayus reported and the hours he was scheduled to work. The manager reviewed the employer's system to see when Mr. Bayus logged in and logged out each day. For the week of February 19-23, the system showed Mr. Bayus worked between 3 and about 6 hours each day. For some of the days this week, Mr. Bayus reported on his timecard working 50 percent more hours than he actually worked.

On March 6, the manager asked Mr. Bayus about these differences. Mr. Bayus explained that it was too hard for him to keep track of his time and he forgot to clock out sometimes. The manager had previously given Mr. Bayus a verbal warning for this same issue. Also, the employer had put Mr. Bayus on a performance improvement plan in September 2022 and again in October 2023 because he was not meeting the employer's work performance expectations. The employer decided to end Mr. Bayus' employment due to the egregiousness of his timecard misreporting and because of his low work performance. The employer ended Mr. Bayus' job on March 6.

IWD paid Mr. Bayus REGULAR (state) UI benefits in the total gross amount of \$4,074.00 for 7 weeks between March 10, 2024 and April 27, 2024. The employer did not participate in the fact-finding interview because it did not receive notice of the interview until after the interview.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge 1) the employer appealed the March 29, 2024 (reference 01) UI decision on time, 2) the employer discharged Mr. Bayus from employment on March 6, 2024 for disqualifying, job-related misconduct, 3) IWD overpaid Mr. Bayus \$4,074.00 in UI benefits, 4) he is not required to repay these benefits back to IWD, and 5) the employer's account is relieved of charges.

The Employer Appealed on Time

Iowa Code § 96.6(2) provides, in relevant part: "[u]nless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision."

Iowa Admin. Code r. 871-24.35(1) provides:

2. Except as otherwise provided by statute or by division rule, any payment, appeal, application, request, notice, objection, petition, report or other information or document submitted to the division shall be considered received by and filed with the division:
 - (2) If transmitted via the United States Postal Service on the date it is mailed as shown by the postmark, or in the absence of a postmark the postage meter mark of the envelope in which it is received; or if not postmarked or postage meter marked or if the mark is illegible, on the date entered on the document as the date of completion.
 - (b) If transmitted via the State Identification Data Exchange System (SIDES), maintained by the United States Department of Labor, on the date it was submitted to SIDES.
 - (c) If transmitted by any means other than [United States Postal Service or the State Identification Data Exchange System (SIDES)], on the date it is received by the division.

Iowa Admin. Code r. 871-24.35(2) provides:

2. The submission of any payment, appeal, application, request, notice, objection, petition, report or other information or document not within the specified statutory or regulatory period shall be considered timely if it is established to the satisfaction of the division that the delay in submission was due to division error or misinformation or to delay or other action of the United States postal service.

The Iowa Supreme Court has declared that there is a mandatory duty to file appeals from representatives' decisions within the time allotted by statute, and that the administrative law judge has no authority to change the decision of a representative if a timely appeal is not filed.² Compliance with appeal notice provisions is jurisdictional unless the facts of a case show that the notice was invalid.³

The employer received the March 29, 2024 (reference 01) UI decision after the appeal deadline and, therefore, could not have appealed by the deadline. The notice provision of the decision was invalid. The employer appealed the day after it received the decision. The employer appealed on time.

The Employer Discharged Mr. Bayus From Employment on March 6, 2024
For Disqualifying, Job-Related Misconduct, So He Is Not Eligible for UI Benefits

Iowa Code section 96.5(2)(a) and (d) provide, in relevant part:

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:

² *Franklin v. IDJS*, 277 N.W.2d 877, 881 (Iowa 1979).

³ *Beardslee v. IDJS*, 276 N.W.2d 373, 377 (Iowa 1979); see also *In re Appeal of Elliott* 319 N.W.2d 244, 247 (Iowa 1982).

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.

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:

...

(13) Theft of an employer or coworker's funds or property

The employer has the burden of proof in establishing disqualifying job misconduct.⁴ The issue is not whether the employer made a correct decision in separating the claimant from employment, but whether the claimant is entitled to unemployment insurance benefits.⁵ Misconduct must be "substantial" to warrant a denial of job insurance benefits.⁶

Theft is misconduct under the explicit statutory definition of misconduct. In addition, the Iowa Supreme Court has found a single attempted theft to be misconduct as a matter of law.⁷ Even the theft of a small value item can be misconduct. The Iowa Court of Appeals has found an employee who took a wasted \$10.00 container of soup from a dumpster was disqualified for misconduct.

In this case, the employer has established that Mr. Bayus stole from the employer by inaccurately reporting his time worked by 50 percent or more on some days during the week of February 19-23. The employer had previously warned Mr. Bayus about accurately reporting his time worked. Still Mr. Bayus continued to inaccurately report his time. This is misconduct. Since the employer has established disqualifying, job-related misconduct, Mr. Bayus is not eligible for UI benefits.

IWD Overpay Mr. Bayus \$4,074.00 in UI Benefits,
But He is Not Required to Repay These Benefits Back to IWD,
And The Employer's Account Is Relieved of Charges

Iowa Code §96.3(7) provides, in relevant part:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its

⁴ *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982).

⁵ *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984).

⁶ *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984).

⁷ *Ringland Johnson Inc. v. Employment Appeal Board*, 585 N.W.2d 269 (Iowa 1998).

discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) (a) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. The employer shall not be relieved of charges if benefits are paid because the employer or an agent of the employer failed to respond timely or adequately to the department's request for information relating to the payment of benefits. This prohibition against relief of charges shall apply to both contributory and reimbursable employers. If the department determines that an employer's failure to respond timely or adequately was due to insufficient notification from the department, the employer's account shall not be charged for the overpayment.

(b) However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment.

Iowa Admin. Code r. 871-24.10 provides, in relevant part:

Employer and employer representative participation in fact-finding interviews.

(1) "Participate," as the term is used for employers in the context of the initial determination to award benefits pursuant to Iowa Code section 96.6, subsection 2, means submitting detailed factual information of the quantity and quality that if unrebutted would be sufficient to result in a decision favorable to the employer. The most effective means to participate is to provide live testimony at the interview from a witness with firsthand knowledge of the events leading to the separation. If no live testimony is provided, the employer must provide the name and telephone number of an employee with firsthand information who may be contacted, if necessary, for rebuttal. A party may also participate by providing detailed written statements or documents that provide detailed factual information of the events leading to separation. At a minimum, the information provided by the employer or the employer's representative must identify the dates and particular circumstances of the incident or incidents, including, in the case of discharge, the act or omissions of the claimant or, in the event of a voluntary separation, the stated reason for the quit. The specific rule or policy must be submitted if the claimant was discharged for violating such rule or policy. In the case of discharge for attendance violations, the information must include the circumstances of all incidents the employer or the employer's representative contends meet the definition of unexcused absences as set forth in 871—subrule 24.32(7). On the other hand, written or oral statements or general conclusions without supporting detailed factual information and information submitted after the fact-finding decision has been issued are not considered participation within the meaning of the statute.

Since Mr. Bayus is not eligible for UI benefits based on how his job ended with the employer, he is not eligible for the UI benefits IWD already sent him. IWD overpaid Mr. Bayus REGULAR (state) UI benefits in the total gross amount of \$4,074.00 for 7 weeks between March 10, 2024 and April 27, 2024.

Since the employer did not participate in the fact-finding interview, Mr. Bayus is not required to repay these benefits back to IWD.

Also, since the employer's non-participation was through no fault of its own, the employer's account should be relieved of charges.

DECISION:

The employer appealed the March 29, 2024 (reference 01) UI decision on time. The March 29, 2024, (reference 01) UI decision is REVERSED. The employer discharged Mr. Bayus from employment on March 6, 2024 for disqualifying, job-related misconduct. Mr. Bayus is not eligible for UI benefits until he has worked in and been paid wages for insured work equal to ten times his weekly UI benefit amount, as long as no other decision denies him UI benefits.

IWD overpaid Mr. Bayus REGULAR (state) UI benefits in the gross amount of \$4,074.00 for 7 weeks between March 10, 2024 and April 27, 2024. Since the employer did not participate in the fact-finding interview, Mr. Bayus is not required to repay these UI benefits back to IWD.

Since employer's non-participation in the fact-finding interview was not the employer's fault, the employer's account is relieved of charges.



Daniel Zeno
Administrative Law Judge

May 2, 2024
Decision Dated and Mailed

rvs

APPEAL RIGHTS. If you disagree with this 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**

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
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.