

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

PETER W DUNCAN
Claimant

O'REILLY AUTOMOTIVE INC
Employer

APPEAL 24A-UI-02062-DZ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 01/28/24
Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

Peter W. Duncan, the claimant/appellant,¹ appealed the Iowa Workforce Development (IWD) February 16, 2024 (reference 01) unemployment insurance (UI) decision. IWD denied Mr. Duncan REGULAR (state) UI benefits because IWD concluded the employer discharged him from employment on January 31, 2024 for violating a known company rule. On February 23, 2024, the Iowa Department of Inspections, Appeals, and Licensing (DIAL), UI Appeals Bureau mailed a notice of hearing to Mr. Duncan and the employer for a telephone hearing scheduled for March 14, 2024.

The administrative law judge held a telephone hearing on March 14, 2024. Mr. Duncan participated in the hearing personally. The employer participated in the hearing through Josie Davis, district manager. The administrative law judge admitted Employer's Exhibit 1 as evidence.

ISSUE:

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

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: Mr. Duncan began working for the employer in June 2019. He worked as a full-time nighttime manager. His employment ended on January 31, 2024.

On, or about, January 15, 2024, Mr. Davis received complaints from two employees alleging sexual harassment against Mr. Duncan. Employee A, a co-worker, and Employee B, another manager, alleged that Mr. Duncan made sexual comments about his sex life, his penis and about hearing a buzzing sound coming from the toilet while Employee A was using the toilet. Mr. Davis contacted both employees and told them that he would investigate their complaints but, due to work travel, he wouldn't be able to interview them until about two weeks later.

¹ Claimant is the person who applied for UI benefits. Appellant is the person or employer who appealed.

On January 23, a customer complained to the employer that Mr. Duncan told the customer that female employees were being promoted only because they were “under the manager’s desk.”

On January 31, Mr. Davis interviewed Employee A, Employee B, Mr. Duncan, and other employees at the store. Employee A, a co-worker, reported that Mr. Duncan told her details of his sex life on multiple occasions, including when he lost his virginity and the size of his penis. Employee A further alleged that a few weeks prior Mr. Duncan joined a conversation Employee was having with another employee about Employee A using the toilet for longer than usual and said, “I thought I heard buzzing in there.” Employee A also alleged that one day, after other employees left leaving only Employee and Mr. Duncan, Mr. Duncan said, “Well, they left us all alone,” and on several occasions Mr. Duncan told Employee A that he had been falsely accused in the past and he denied the accusations, but he did say the things he was accused of saying. Employee B, another manager, reported that Mr. Duncan giggled when another employee asked if Employee B and another employee were “nesting.”

Mr. Duncan denied all the allegations. Mr. Duncan stated that he felt targeted by the two employees who made the complaints.

Mr. Davis and the human resources manager discussed the investigation. In June 2023, the employer had given Mr. Duncan verbal coaching for violating the employer’s harassment free workplace policy. The employer’s policy prohibits sexual harassment. Mr. Duncan acknowledged receiving a copy of the policy on, or about, his hire date.

The employer concluded that the customer’s February 23 complaint was partially proven because of the employer’s prior warning to Mr. Duncan. The employer also concluded that Employee A and Employee B’s allegations were proven because the employer believed Employee A and B and did not believe Mr. Duncan’s denial. The employer terminated Mr. Duncan’s employment on January 31.

Mr. Duncan again denied the allegations during the hearing. Mr. Duncan testified that he believes Employee A and Employee colluded to complain about him because he told them to do their job. Mr. Duncan also testified that he complained to the employer about Employee A and Employee B not working and the employer took no action. Mr. Duncan further testified that just like in life, when women cry wolf, they get whatever they want.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the employer discharged Mr. Duncan from employment on January 31, 2024 for disqualifying, job-related misconduct.

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:

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.

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 the claimant from employment, but whether the claimant is entitled to unemployment insurance benefits.³ Misconduct must be "substantial" to warrant a denial of job insurance benefits.⁴

The employer may establish reasonable work rules and expect employees to abide by them. The employer has presented credible evidence that Mr. Duncan violated the employer's policy harassment policy. The employer had already given Mr. Duncan a warning for violating the policy in the past. Despite the warning, Mr. Duncan continued to engage in similar behavior. This is disqualifying misconduct. Mr. Duncan is not eligible for UI benefits.

DECISION:

The February 16, 2024 (reference 01) UI decision is AFFIRMED. The employer discharged Mr. Duncan from employment on January 31, 2024 for disqualifying, job-related misconduct. Mr. Duncan 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.



Daniel Zeno
Administrative Law Judge

March 21, 2024
Decision Dated and Mailed

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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).

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 IA 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 IA 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.