

**IOWA DEPARTMENT OF INSPECTIONS AND APPEALS
ADMINISTRATIVE HEARINGS DIVISION, UI APPEALS BUREAU**

ERIC L STAHR
Claimant

STORYPEOPLE GRAPHICS INC
Employer

APPEAL 22A-UI-18547-SC-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 09/18/22
Claimant: Respondent (1)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quitting
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 December 2, 2022, Storypeople Graphics, Inc. (employer) filed an appeal from the October 24, 2022, reference 02, unemployment insurance decision that allowed benefits based upon the determination Eric L. Stahr (claimant) was not discharged for willful or deliberate misconduct. The parties were properly notified about the hearing held by telephone on November 29, 2022. The claimant participated personally. The employer participated through Ellen Rockne, Owner/Chief Executive Officer (CEO). No exhibits were admitted into the record as the documents submitted by the claimant were not relevant to the decision. The administrative law judge took official notice of the administrative record, specifically the fact-finding documents and the claimant's claim history.

ISSUES:

Did the claimant voluntarily leave the employment with good cause attributable to the employer or did the employer discharge the claimant for reasons related to job misconduct sufficient to warrant a denial of benefits?

Has the claimant been overpaid unemployment insurance benefits and, if so, can the repayment of those benefits to the agency be waived and charged to the employer's account?

FINDINGS OF FACT:

Having reviewed all the evidence in the record, the administrative law judge finds: The claimant and Ellen Rockne (Rockne), Owner/CEO, were in a romantic relationship prior to Rockne purchasing the employer. After the purchase, the claimant began assisting Rockne part-time. In the spring of 2019, he left his full-time job to become the Chief Financial Officer (CFO) and Chief Operations Officer (COO) who also did building maintenance. During his employment, the

claimant had failed at times to pay vendors or file the necessary federal reports. But Rockne did not learn of the extent of issues until after September 20, 2022.

The claimant and Rockne ended their personal relationship in the late spring or early summer of 2022. They agreed the claimant would transition out of his position at some point, but no dates were established. Rockne allowed the claimant to work part-time while he finished up his house for an inspection related to refinancing. She also made a personal loan to him, and he kept moving back when the money would be repaid.

The claimant's last day worked was September 16. Rockne had become frustrated with the claimant's statements regarding the personal loan and the tension their relationship ending had brought to the workplace. Initially, she told him to work from home. But she did not issue any disciplinary warnings related to work performance or other issues.

On September 20, Rockne sent the claimant a text message telling him to return all company property in his possession. The claimant returned the requested property. Rockne hired a bookkeeper to assume the financial portion of the claimant's responsibilities.

The administrative record reflects that claimant has received \$5,510.00 in regular unemployment benefits, since filing a claim with an effective date of September 18, 2022, for the ten weeks between September 18 and November 26, 2022. Rockne did not participate in the fact-finding on behalf of the employer due to issues with her phone. She did provide two written statements that did not state the specific reason the claimant's employment ended.

REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code section 96.5 provides, in relevant part:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

...

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 even 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 provides, in relevant part:

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.

...

(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.

...

(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 Iowa Supreme Court has held that this definition of misconduct accurately reflects the intent of the legislature.¹

¹ *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

Iowa unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct.² The employer has the burden of proof to show that the claimant voluntarily left their employment.³ A voluntary quitting of employment requires that an employee exercise a voluntary choice between remaining employed or terminating the employment relationship.⁴ It requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention.⁵ Where there is no expressed intention or act to sever the relationship, the case must be analyzed as a discharge from employment.⁶

In this case, the parties knew that the claimant's employment would end at some point, but the claimant intended to continue working with no specific end date. He did not express an imminent intention to leave, nor did he engage in an overt act to sever the relationship. Rather, on September 20, the employer told him to return all company property in his possession, after which a reasonable person would assume that was the end of their employment. The employer has not established that the claimant voluntarily left his employment and the case must be analyzed as a discharge.

The employer has the burden of proof in establishing disqualifying job misconduct.⁷ 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 it 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. 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.⁸

What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions.⁹ Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature.¹⁰ Poor work performance is not misconduct in the absence of evidence of intent.¹¹

The employer has not met the burden of proof to establish that the claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning. The employer could not identify a work-related final incident that led to the text message on

² Iowa Code §§ 96.5(1) and 96.5(2)a.

³ *Irving v. Emp't Appeal Bd.*, 883 N.W.2d 179 (Iowa 2016).

⁴ *Wills v. Emp't Appeal Bd.*, 447 N.W.2d 137, 138 (Iowa 1989); *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438, 440 (Iowa Ct. App. 1992).

⁵ *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980).

⁶ *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992).

⁷ *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982).

⁸ *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984).

⁹ *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988).

¹⁰ *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984).

¹¹ *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988).

September 20, and the claimant had not received any warnings related to misconduct. An employee is entitled to fair warning that the employer will no longer tolerate certain performance and conduct. Without fair warning, an employee has no reasonable way of knowing that there are changes that need be made in order to preserve the employment. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given. Accordingly, benefits are allowed.

As benefits are allowed, the issue of overpayment is moot and charges to the employer's account cannot be waived.

DECISION:

The October 24, 2022, reference 02, unemployment insurance decision is AFFIRMED. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided they are otherwise eligible. As benefits are allowed, the issue of overpayment is moot and charges to the employer's account cannot be waived.



Stephanie R. Callahan
Administrative Law Judge

December 7, 2022
Decision Dated and Mailed

src/mh

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
4th Floor – Lucas Building
Des Moines, Iowa 50319
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
4th Floor – Lucas Building
Des Moines, Iowa 50319
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 adquiriera 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.