

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

JOSEPH G HOGARTH
Claimant

PERFECTION LEARNING CORPORATION
Employer

APPEAL 22A-UI-20013-DZ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 11/27/22
Claimant: Respondent (2)

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

STATEMENT OF THE CASE:

Perfection Learning Corporation, the employer/appellant, filed an appeal from the Iowa Workforce Development (IWD) December 16, 2022 (reference 01) unemployment insurance (UI) decision. The decision allowed REGULAR (state) UI benefits because IWD concluded that the employer had dismissed Mr. Hogarth from work on October 3, 2022 for a non-disqualifying reason. The Iowa Department of Inspections and Appeals UI Appeals Bureau mailed notices of hearing to the employer and Mr. Hogarth. A telephone hearing was held on January 10, 2023. The employer participated through Debra Oliver, director of human resources. Mr. Hogarth participated personally. The administrative law judge took official notice of the administrative record and admitted Employer's Exhibit 1, and Claimant's Exhibits A-F.

ISSUES:

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

Was Mr. Hogarth overpaid benefits?

If so, should he repay the benefits?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: Mr. Hogarth began working for the employer, an educational publisher, on September 15, 2014. He worked as a full-time material handler. His employment ended on October 3, 2022.

In October 2019, the employer gave Mr. Hogarth a verbal warning because he had an argument with a co-worker. In June 2021, the employer gave Mr. Hogarth a written warning because he had an argument with a co-worker and because he had slammed equipment and materials because he was frustrated. In June 2022, employees reported to the employer that Mr. Hogarth made the work environment uncomfortable because he would slam materials when he became frustrated. The employer enrolled Mr. Hogarth in a 30-day anger management class.

On Friday, September 23, 2022, three or four employees reported to the employer that Mr. Hogarth was making the work environment uncomfortable and unsafe by his slamming materials again and throwing books due to his frustrations. Some of the employees reported their concerns to Ms. Oliver directly. The following Wednesday, September 28, Mr. Hogarth left the job site and went sit in his vehicle. Mr. Hogarth's manager went to Mr. Hogarth's vehicle and asked him why he was sitting in his car. Mr. Hogarth responded that he did not have work to do so he was sitting in his car. The following Monday, October 3, the employer called Mr. Hogarth into the office and told him that his job was over because of his actions on September 23 and 28.

Mr. Hogarth testified in the appeal hearing that he was taking his authorized break early when he was sitting in his car because he did not have work to do at that time. Mr. Hogarth denied slamming books on September 23, 2022 and in June 2021. Mr. Hogarth admitted to being frustrated in June 2022. Mr. Hogarth had spoken with the employer about another employee who he was frustrated with about work and he stated that argument will happen at some point when a person is frustrated.

Mr. Hogarth has received \$0.00 in REGULAR (state) UI benefits on his UI claim. The employer did not participate in the fact-finding interview.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the employer discharged Mr. Hogarth from employment for job-related misconduct.

Iowa Code section 96.5(2)(a) and (d) provide:

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 such 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.

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

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 decision in this case rests, at least in part, on the credibility of the witness. It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue.⁵ The administrative law judge may believe all, part or none of any witness's testimony.⁶ In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience.⁷ 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 believable evidence; 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.⁸

The findings of fact show how the administrative law judge has resolved the disputed factual issues in this case. The administrative law judge assessed the credibility of the witnesses who testified during the hearing, considered the applicable factors listed above, and used his own common sense and experience.

In this case, the employer has established disqualifying, job-related misconduct. The employer has presented credible evidence that Mr. Hogarth continued to slam materials out of frustration after having been warned, and he walked off the job on September 28, 2022 without permission. Mr. Hogarth's testimony that he was taking his break early when he was sitting in his car that

¹ *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445, 448 (Iowa 1979).

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).

⁵ *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007).

⁶ *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996).

⁷ *Id.*

⁸ *Id.*

day is undercut by the fact that that is not what he told his supervisor on that day. Despite the employer's warnings, Mr. Hogarth continued to engage in similar behavior. This is disqualifying misconduct. UI benefits are denied.

Since Mr. Hogarth has not received any UI benefits, he has not been overpaid benefits and there are no benefits for him to repay.

DECISION:

The December 16, 2022 (reference 01) UI decision is REVERSED. The employer discharged Mr. Hogarth from employment for job-related misconduct. Benefits are withheld until such time as Mr. Hogarth has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, as long as no other decision denies him UI benefits.

Since Mr. Hogarth has not received any UI benefits, he has not been overpaid benefits.



Daniel Zeno
Administrative Law Judge

January 18, 2023
Decision Dated and Mailed

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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
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 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.