

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

ANA M ZAPATA
Claimant

APPEAL 24A-UI-03450-ED-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

ALLSTEEL INC
Employer

OC: 03/03/24
Claimant: Respondent (1)

Iowa Code § 96.4(3) – Able to and Available
Iowa Code § 96.5(1) – Voluntary Quit
Iowa Code § 96.5(2)A – Discharge for Misconduct
Iowa Code § 96.3(7) – Overpayment
Iowa Admin Code R. 871-24.10 - Employer Chargeability

STATEMENT OF THE CASE:

The Employer/appellant, All Steel Inc, filed an appeal from the March 21, 2024 (reference 02), unemployment insurance, decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on April 23, 2024. Claimant, Ana Zapata, participated and testified. Employer, All Steel, participated through witnesses, Shannon Telsrow and Freda Leopold and hearing representative, Dave Peterson. CTS LanguageLink provided interpretation services. Employer's Exhibit A was offered and admitted into the record. Official notice was taken of the claimant's administrative record.

ISSUES:

Was the separation a layoff, discharge for misconduct or voluntary quit without good cause attributable to the employer?
Was the claimant overpaid benefits?
Did the employer participate in the fact-finding process?

FINDINGS OF FACT:

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

The claimant was hired on March 19, 2007 as production coordinator one. She worked on a full-time basis. Her immediate supervisor was Daniel Brown. The claimant last worked in the job on February 28, 2024. The claimant was discharged from employment on February 28, 2024 because the employer was not able to accommodate the claimant's restriction.

The claimant provided documentation from her medical provider on November 30, 2023 that her restrictions were as follows: four pound overhead restriction with right side only rarely, preferred

most activities at around waist level, ten pounds push pull lift with right arm. The employer was unable to accommodate the restrictions because her position was in the assembly line. The employer asks all members to rotate within the assembly line for safety reasons. With the claimant's restrictions, the employer was only able to accommodate the claimant in one out of the six rotations. Due to safety concerns, the company policy requires members to rotate positions rather than perform the same position all day. Because the claimant could not rotate into all six positions due to her restrictions, she was unable to continue working in the production coordinator position. A standing position was available within the claimant's restrictions and would not change her pay. The employer was able to alter the table to fit her for the standing position. The claimant declined the role.

The employer substantially participated in the fact-finding process.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant's separation from the employment was without good cause attributable to the employer.

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 Code §96.5(1) provides:

An individual shall be disqualified for benefits:

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.

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 termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988). Where an employee did not voluntarily quit but was terminated while absent under medical care, the employee is allowed benefits and is not required to return to the employer and offer services pursuant to the subsection (d) exception of Iowa Code section 96.5(1). *Prairie Ridge Addiction Treatment Servs. v. Jackson and Emp't Appeal Bd.*, 810 N.W.2d 532 (Iowa Ct. App. 2012).

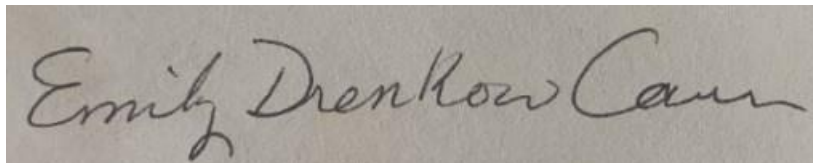
An employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, employer incurs potential liability for

unemployment insurance benefits related to that separation. In this case, employer did not present any evidence that claimant engaged in job-related misconduct. As a result, employer has not met the burden of proof to establish that claimant engaged in misconduct that would disqualify her from benefits. Benefits are allowed.

The next issue to be determined is whether the claimant was able to and available for work. For the reasons that follow, the administrative law judge concludes the claimant was able to work and available for work. Benefits are allowed, provided the claimant is otherwise eligible. Iowa Code section 96.4(3) provides: An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that: 3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph (1), or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h". An individual claiming benefits has the burden of proof that she is able to work, available for work, and earnestly and actively seeking work. Iowa Admin. Code r. 871-24.22. Claimant has been released to work and identified jobs that she was able to perform. Claimant has established that she was able to and available for work. Benefits are allowed provided the claimant is otherwise eligible.

DECISION:

The March 21, 2024, (reference 02) unemployment insurance decision is affirmed. The claimant was discharged from employment for no disqualifying reason. The claimant is able to and available for work. Benefits are allowed.

A handwritten signature in dark ink on a light-colored background. The signature reads "Emily Drenkow Carr" in a cursive, flowing script.

Emily Drenkow Carr
Administrative Law Judge

April 29, 2024
Decision Dated and Mailed

ed/scn

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, 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 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.