

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

TODD M THOMA
Claimant

APPEAL 23A-UI-00092-DZ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OPEN GATES BUSINESS DEVELOPMENT
C**
Employer

**OC: 11/27/22
Claimant: Appellant (2)**

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

STATEMENT OF THE CASE:

Todd M. Thoma, the claimant/appellant, filed an appeal from the Iowa Workforce Development (IWD) December 28, 2022 (reference 02) unemployment insurance (UI) decision. The decision denied REGULAR (state) UI benefits because IWD concluded that the employer had discharged Mr. Thomas from work on November 28, 2022 for conduct not in the best interest of the employer. The Iowa Department of Inspections and Appeals UI Appeals Bureau mailed notices of hearing to Mr. Thoma and the employer. A telephone hearing was held on January 24, 2023. Mr. Thoma participated personally. The employer participated through Jed Stramel, managing director, Erica Smith, operations manager and Tara Benson, human resources.

ISSUE:

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

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: Mr. Thoma began working for the employer on August 6, 2021. He worked as a full-time logistics coordinator. His employment ended on November 28, 2022.

On Saturday, November 26, 2022, Mr. Thoma sent Mr. Stramel a text message stating that Mr. Thoma planned to purchase a company (Company A), and take over Company A in the spring of 2023. Company A competes with the employer. Mr. Stramel did not respond to Mr. Thoma. Prior to Mr. Thoma's text, Mr. Stramel had asked Mr. Thoma to find out more about Company A because the employer was considering buying Company A. Mr. Thoma was involved in the employer's conversations about potentially buying Company A. The employer concluded that Mr. Thoma had engaged in misrepresentation because he was involved in the employer's internal conversations about potentially buying Company A and he then bought Company A. The employer also concluded that Mr. Thoma's purchase of Company A was a conflict of interest. The employer does not have a conflict-of-interest policy.

On Sunday, November 28, Mr. Stramel called Mr. Thoma and told him that his employment with the employer was over because of a conflict of interest and for poor work performance. Mr. Thoma asked Mr. Stramel for further explanation about why the employer was ending his job. Mr. Stramel hung up.

In January 2022, the employer had implemented an improvement plan for Mr. Thoma because he had been making mistakes. By November 28, the employer had reviewed the plan and had planned to implement a new improvement plan for Mr. Thoma. The employer ended Mr. Thoma's job before it implemented the new improvement plan.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the employer discharged Mr. Thoma from employment for no disqualifying reason.

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

Iowa Admin. Code r. 871-24.32(8) provide:

(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 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

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, but 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. A determination as to whether an employee’s act is misconduct does not rest solely on the interpretation or application of the employer’s policy or rule. A violation employer’s policy or rule is not necessarily disqualifying misconduct even if the employer was fully within its rights to impose discipline up to or including discharge for the incident under its policy.

In this case, the employer has not established misconduct on the part of Mr. Thoma. The employer does not have a conflict-of-interest policy. Furthermore, Mr. Thoma owning a competing company in the future does not establish a current act of misconduct. The most recent incident leading to Mr. Thoma's discharge must be a current act of misconduct to disqualify him from receiving UI benefits.

Regarding the other reason for which the employer terminated Mr. Thoma's employment, failure in job performance due to inability or incapacity is not considered misconduct because the actions were not volitional.⁵ Where an individual is discharged due to a failure in job performance, proof of that individual’s ability to do the job is required to justify disqualification, rather than accepting the employer’s subjective view. To do so is to impermissibly shift the burden of proof to the claimant.⁶ In this case, the employer saw improvement from Mr. Thoma. Inasmuch as Mr. Thoma attempted to perform the job to the best of his ability but was unable to meet its expectations, no intentional misconduct has been established, as is the employer’s burden of proof.⁷ Since the employer has not established disqualifying, job-related misconduct on the part of Mr. Thoma, UI benefits are allowed.

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

⁶ *Kelly v. Iowa Dep’t of Job Serv.*, 386 N.W.2d 552 (Iowa Ct. App. 1986).

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

DECISION:

The December 28, 2022 (reference 02) UI decision is REVERSED. The employer discharged Mr. Thoma from employment for no disqualifying reason. Benefits are allowed, as long as no other decision denies Mr. Thoma UI benefits. Any benefits claimed and withheld on this basis shall be paid.



Daniel Zeno
Administrative Law Judge

January 30, 2023
Decision Dated and Mailed

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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 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.