

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

PADDIE E LA BRUYERE
Claimant

THEISENS INC
Employer

APPEAL NO. 24A-UI-06244-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 06/09/24
Claimant: Appellant (1)**

Iowa Code Section 96.5(2)(a) & (d) – Discharge for Misconduct

STATEMENT OF THE CASE:

On July 6, 2024, Paddie La Bruyere (claimant) filed a timely appeal from the July 5, 2024 (reference 01) decision that disqualified her for benefits and that relieved the employer's account of liability for benefits, based on the deputy's conclusion that Ms. La Bruyere was discharged on June 11, 2024 for misconduct in connection with the employment. After due notice was issued, a hearing was held on July 22, 2024. Ms. La Bruyere participated. Kelly Boge represented the employer. Exhibits 1 through 4 and A were received into evidence.

ISSUE:

Whether the claimant was discharged for misconduct in connection with the employment.

FINDINGS OF FACT:

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

Paddie La Bruyere (claimant) was employed by Theisen's, Inc. as full-time, salaried assistant manager at the Ames Theisen's store from April 2021 until June 11, 2024, when the employer discharged her from the employment for violating the employer's social media policy.

On June 11, 2024, a person the employer identifies as an anonymous individual sent the employer a digital video recording of Ms. La Bruyere. Ms. La Bruyere made the recording Altoona drinking establishment. Ms. La Bruyere elected to wear her employer-issued, blue manager polo with Theisen's logo while she was at the drinking establishment making the video. Ms. La Bruyere operates the drinking establishment's karaoke events. In the recorded video, Ms. La Bruyere sang a patently vulgar song for which she improvised lyrics. Ms. La Bruyere repeatedly sang "fuck this job" and "slob my knob," a vulgar reference to an oral sex act. In her song, Ms. La Bruyere repeatedly directed "fuck" comments and "slob my knob" directives at Theisen's personnel. Ms. La Bruyere identified the intended recipients of her vulgar, patently offensive utterances by the shirt colors they wore at work pursuant to Theisen's dress code. For example, Ms. La Bruyere directed one such vulgar utterance at "black shirts," Theisen's corporate office personnel. Ms. La Bruyere posted the video on the social media platform

Snapchat so that she could share it with 25 people she connects with on Snapchat. One recipient was a fellow Theisen's manager. Ms. La Bruyere suspects that person was the "anonymous" individual who shared the video with the employer's corporate office.

At the start of Ms. La Bruyere's employment, the employer provided her with a handbook that included a set of Company Rules and a Social Media Policy. While most of the prohibited behaviors set forth in the Company Rules refer to conduct in the workplace, some of the prohibited acts extend to conduct outside the workplace. The prohibited behaviors include the following:

Conduct that violates common decency and morality. Obscene or abusive language, gestures, or actions directed toward others. Displaying unprofessional behavior and/or failing to deal with others in a respectful manner.

The employer's Social Media Policy applies to all social media platforms and applies to off-duty conduct. The policy prohibits social media posts that are disrespectful, discourteous or harassing toward fellow associates, supervisors, managers, customers, vendors or other people affiliated with Theisen's. The policy warns that such posts could lead to disciplinary action up to and including termination of the employment.

As an assistant manager, Ms. La Bruyere was responsible for assisting with enforcing the employer's policies.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(2)(a) and (d) provides as follows:

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 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. Misconduct by an individual includes but is not limited to all of the following:

...

(2) Knowing violation of a reasonable and uniformly enforced rule of an employer.

...

See also Iowa Admin. Code r. 871-24.32(1)(a) (duplicating the text of the statute).

The employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See *Lee v. Employment Appeal Board*, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See *Gimbel v. Employment Appeal Board*, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

While past acts and warnings can be used to determine the magnitude of the current act of misconduct, a discharge for misconduct cannot be based on such past act(s). The termination of employment must be based on a current act. See 871 IAC 24.32(8). In determining whether the conduct that prompted the discharge constituted a “current act,” the administrative law judge considers the date on which the conduct came to the attention of the employer and the date on which the employer notified the claimant that the conduct subjected the claimant to possible discharge. See also *Greene v. EAB*, 426 N.W.2d 659, 662 (Iowa App. 1988).

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. See Iowa Administrative Code rule 87124.32(4).

An employer has the right to expect decency and civility from its employees and an employee’s use of profanity or offensive language in a confrontational, disrespectful, or name-calling context may be recognized as misconduct disqualifying the employee from receipt of unemployment insurance benefits. *Henecke v. Iowa Department of Job Service*, 533 N.W.2d 573 (Iowa App. 1995). Use of foul language can alone be a sufficient ground for a misconduct disqualification for unemployment benefits. *Warrell v. Iowa Dept. of Job Service*, 356 N.W.2d 587 (Iowa Ct. App. 1984). An isolated incident of vulgarity can constitute misconduct and warrant disqualification from unemployment benefits, if it serves to undermine a superior’s authority. *Deever v. Hawkeye Window Cleaning, Inc.*, 447 N.W.2d 418 (Iowa Ct. App. 1989).

Violation of a specific work rule, even off-duty, can constitute misconduct sufficient to disqualify a claimant from unemployment insurance benefits. See *Kleidosty v. Employment Appeal Board*, 482 N.W.2d 416, 418 (Iowa 1992). But the employer must have a work rule that covers the off-duty conduct.

The evidence in the record establishes a discharge for misconduct in connection with the employment. The claimant knowingly and intentionally violated the employer’s uniformly enforced social media policy when she elected to record and post on a social media platform a recording of herself directing profane and patently vulgar utterances at the employer and the employer’s staff while wearing a Theisen’s logo uniform shirt that identified her as a Theisen’s manager. The policy in question applied to off-duty conduct. The conduct came to the employer’s attention on the same day the employer discharged the claimant from the employment. The conduct constituted misconduct in connection with the employment. The claimant is disqualified for benefits until the claimant has worked in and been paid wages for insured work equal to 10 times the claimant’s weekly benefit amount. The claimant must meet all other eligibility requirements. The employer’s account shall not be charged for benefits.

DECISION:

The July 5, 2024 (reference 01, decision is AFFIRMED. The claimant was discharged on June 11, 2024 for misconduct in connection with the employment. The claimant is disqualified for benefits until the claimant has worked in and been paid wages for insured work equal to 10 times the claimant's weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account shall not be charged for benefits.

A handwritten signature in cursive script that reads "James E. Timberland". The signature is written in black ink on a light gray rectangular background.

James E. Timberland
Administrative Law Judge

July 30, 2024
Decision Dated and Mailed

rvs

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 Ave 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>.

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 Ave 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 adquiera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que está en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

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.