

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

**NATHAN R JOHNSON**  
Claimant

**PELLA CORPORATION**  
Employer

**APPEAL 23A-UI-06511-DZ-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 05/21/23  
Claimant: Respondent (1)**

Iowa Code § 96.5(2)a – Discharge

**STATEMENT OF THE CASE:**

Pella Corporation, the employer/appellant,<sup>1</sup> filed an appeal from the Iowa Workforce Development (IWD) June 21, 2023 (reference 02) unemployment insurance (UI) decision. The decision allowed Mr. Johnson REGULAR (state) UI benefits because IWD concluded the employer dismissed him from work on May 11, 2023 for a reason that did not disqualify him from receiving UI benefits. On June 29, 2023, the Iowa Department of Inspections, Appeals, and Licensing, UI Appeals Bureau mailed a notice of hearing to the employer and Mr. Johnson for a telephone hearing scheduled for July 17, 2023.

The undersigned administrative law judge held a telephone hearing on July 17, 2023. The employer participated through Brad Bounds, human resources (HR) representative. Mr. Johnson did not participate in the hearing. The undersigned took official notice of the administrative record and admitted Employer's Exhibit 1 as evidence.

**ISSUES:**

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

Did IWD overpay Mr. Johnson UI benefits?

If so, should he repay the benefits?

**FINDINGS OF FACT:**

Having reviewed the evidence in the record, the administrative law judge finds: Mr. Johnson began working for the employer on September 19, 2022. He worked as a full-time operator. His employment ended on May 12, 2023.

On May 11, Mr. Johnson and another employee (Employee A) were in an altercation. After the altercation, Employee A reported to the employer that Mr. Johnson grabbed and cursed at Employee A. The employer opened an investigation that same day and interviewed Mr. Johnson twice, and Employee A and five witnesses once each.

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<sup>1</sup> Appellant is the person or employer who filed the appeal.

One witness reported seeing none of the interaction, and another witness reported seeing Employee A walk away after the interaction. Mr. Johnson, Employee A and the other three witnesses all reported that Employee A initiated the interaction by grabbing Mr. Johnson's bag and grabbing rubber bands from his bag. Employee A reported that Mr. Johnson grabbed Employee A's shirt and called Employee A a "fucking idiot"<sup>2</sup> The three other witnesses reported that Mr. Johnson grabbed Employee A by the shirt and pushed Employee A. Mr. Johnson initially reported that he reached to grab Employee A's hand, but he didn't touch Employee A. In the second interview, Mr. Johnson reported that he did grab Employee A's hand as he tried to get his rubber bands back but denied pushing Employee A. Mr. Johnson admitted to cursing, but he denied that he cursed at Employee A. The employer suspended Mr. Johnson pending investigation. The employer completed its investigation and concluded that Mr. Johnson had engaged in fighting.

The next day, the employer terminated Mr. Johnson's employment for violating the employer's policy against fighting at work. The policy prohibits provoking or instigating a fight and fighting at work on the employer's property and provides that employees who do so are subject to the employer immediately terminating the employee's employment. Mr. Johnson acknowledged receiving a copy of the policy on, or about, his hire date.

#### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the undersigned concludes the employer discharged Mr. Johnson from employment for a reason that does not disqualify him from receiving UI benefits.

Iowa Code section 96.5(2)(a) and (d) provide, in relevant part:

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 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.

The employer has the burden of proof in establishing disqualifying job misconduct.<sup>3</sup> The issue is not whether the employer made a correct decision in separating the claimant from

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<sup>2</sup> Employer's Exhibit 1, page 16.

<sup>3</sup> *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982).

employment, but whether the claimant is entitled to unemployment insurance benefits.<sup>4</sup> Misconduct must be “substantial” to warrant a denial of job insurance benefits.<sup>5</sup>

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 of the 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, Employee A initiated the altercation with Mr. Johnson. In response, Mr. Johnson made physical contact with Employee A’s hand and/or shirt in an effort to get his rubber bands back, and cursed but he did not curse at Employee A. Mr. Johnson’s contact with Employee A was careless and an incident of poor judgment, but it did not rise to the level of intentional misconduct. Based on these facts, the employer has not established disqualifying, job-related misconduct so Mr. Johnson is eligible for UI benefits.

The issues of overpayment and repayment are moot. An issue being moot means there is nothing left to decide.<sup>6</sup> This is so because Mr. Johnson is eligible for REGULAR (state) UI benefits per this decision.

**DECISION:**

The June 21, 2023 (reference 02) UI decision is AFFIRMED. The employer discharged Mr. Johnson from employment for a reason that does not disqualify him from receiving UI benefits. Benefits are allowed, as long as no other decision denies Mr. Johnson UI benefits.



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Daniel Zeno  
Administrative Law Judge

July 25, 2023  
Decision Dated and Mailed

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<sup>4</sup> *Infante v. Iowa Dep’t of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984).

<sup>5</sup> *Newman v. Iowa Dep’t of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984).

<sup>6</sup> *Iowa Bankers Ass’n v. Iowa Credit Union Dep’t*, 335 N.W.2d 439, 442 (Iowa 1983).

**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  
4<sup>th</sup> Floor – Lucas Building  
Des Moines, Iowa 50319  
Fax: (515)281-7191  
Online: [eab.iowa.gov](http://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.