

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

COREY JONS
Claimant

MCCLINTOCK INSURANCE INC
Employer

APPEAL NO. 25A-UI-01763-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 02/09/25
Claimant: Respondent (1)**

Iowa Code Section 96.5(2)(a) – Discharge

STATEMENT OF THE CASE:

On February 28, 2025, the employer filed a timely appeal from the February 26, 2025 (reference 01) decision that allowed benefits to the claimant, provided the claimant met all other eligibility requirements, and that held the employer's account could be charged for benefits, based on the deputy's conclusion that the claimant was discharged on January 19, 2025 for no disqualifying reason. After due notice was issued, a hearing was held on March 18, 2025. Corey Jons (claimant) participated. Tim McClintock represented the employer. Exhibit 1 was received into evidence. The administrative law judge took official notice of the following agency administrative records: DBRO and KFFV. The administrative law judge took official notice of the fact-finding materials for the limited purpose of documenting the employer's participation in the fact-finding interview.

ISSUES:

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:

Corey Jons (claimant) was employed by McClintock Insurance, Inc. as a full-time customer service agent from July 2024 until January 19, 2025, when Tim McClintock, President, discharged her from the employment. The employer hired Ms. Jons with the expectation that Ms. Jons would obtain an insurance license. Ms. Jons agreed to pursue the insurance license. The employer did not provide a deadline for obtaining the license. The law did not require the license to be obtained within a particular period. Without the license, Ms. Jons could perform supportive clerical work but could not provide insurance quotes to clients. Obtaining the insurance license required that Ms. Jons pass a two-part licensure test. One section of the test dealt with issues of law. The other section of the test dealt with insurance coverage issues. To earn a passing score on the test, Ms. Jons had to score 70 percent or better on each section of the test. Despite good faith effort in preparing for and taking the licensure test, Ms. Jons was unable to pass the test before the employer lost faith in her ability to do so and, therefore, was unable to secure an insurance license. Ms. Jons attempted the test in August, September,

October, and November 2024. On the first two attempts, Ms. Jons did not pass either section of the test. On the third and four attempts, Ms. Jons passed the law section but only scored 60 percent on the coverage section. After the fourth attempt, the employer withdrew preparation assistance.

On January 17, 2025, Ms. Jons made her fifth attempt to pass the licensing test. However, at the time of the test, Ms. Jons was physically ill and had to temporarily excuse herself from the proctored, timed test. Ms. Jons had started a new medication two days earlier and been dealing with a hip injury. Due to the time Ms. Jons needed to address her illness issues, upon her return to the test she was unable to finish the test by the time cut-off and again failed the test. On January 19, 2025, Mr. McClintock notified Ms. Jons that he was ending her employment.

The employer considered other concerns in making the decision to discharge Ms. Jons from the employment. During the employment, Ms. Jons resided at a residential facility (half-way house). During the last week of the employment, an over-zealous staff member from the half-way house followed Ms. Jons back to the workplace after Ms. Jons finished with a dental appointment and made a scene in the workplace as she demanded to review the contents of Ms. Jons' purse. Ms. Jons had done nothing to provoke the scrutiny and had no control over the other individual's conduct. The half-way house staff member was terminated the following day in response to the incident. On another afternoon during the last week of the employment, the employer discovered as part of a monthly audit that Ms. Jons had documented receipt of client funds in the appropriate accounting book but had forgotten to enter the same information into the employer's computer system so that the payments would be documented with the relevant insurers' systems. There had been no prior similar issues. Earlier in the employment, there had been a miscommunication whereby the employer communicated that the employer wanted Ms. Jons to prepare quote information for other staff to use in making quotes. Ms. Jons did not perform the tasks in question because she misunderstood the employer to mean the tasks would be part of her future training once she received her license.

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:

(1) Material falsification of the individual's employment application.

- (2) Knowing violation of a reasonable and uniformly enforced rule of an employer.
- (3) Intentional damage of an employer's property.
- (4) Consumption of alcohol, illegal or nonprescribed prescription drugs, or an impairing substance in a manner not directed by the manufacturer, or a combination of such substances, on the employer's premises in violation of the employer's employment policies.
- (5) Reporting to work under the influence of alcohol, illegal or nonprescribed prescription drugs, or an impairing substance in an off-label manner, or a combination of such substances, on the employer's premises in violation of the employer's employment policies, unless the individual is compelled to work by the employer outside of scheduled or on-call working hours.
- (6) Conduct that substantially and unjustifiably endangers the personal safety of coworkers or the general public.
- (7) Incarceration for an act for which one could reasonably expect to be incarcerated that results in missing work.
- (8) Incarceration as a result of a misdemeanor or felony conviction by a court of competent jurisdiction.
- (9) Excessive unexcused tardiness or absenteeism.
- (10) Falsification of any work-related report, task, or job that could expose the employer or coworkers to legal liability or sanction for violation of health or safety laws.
- (11) Failure to maintain any license, registration, or certification that is reasonably required by the employer or by law, or that is a functional requirement to perform the individual's regular job duties, unless the failure is not within the control of the individual.
- (12) Conduct that is libelous or slanderous toward an employer or an employee of the employer if such conduct is not protected under state or federal law.
- (13) Theft of an employer or coworker's funds or property.
- (14) Intentional misrepresentation of time worked or work carried out that results in the individual receiving unearned wages or unearned benefits.

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 Iowa Admin. Code rule 871-24.24(7). 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).

Continued failure to follow reasonable instructions constitutes misconduct. See *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990). An employee's failure to perform a specific task may not constitute misconduct if such failure is in good faith or for good cause. See *Woods v. Iowa Department of Job Service*, 327 N.W.2d 768, 771 (Iowa 1982). The administrative law judge must analyze situations involving alleged insubordination by evaluating

the reasonableness of the employer's request in light of the circumstances, along with the worker's reason for non-compliance. See *Endicott v. Iowa Department of Job Service*, 367 N.W.2d 300 (Iowa Ct. App. 1985). In *Gilliam v. Atlantic Bottling Company*, the Iowa Court of Appeals upheld a discharge for misconduct and disqualification for benefits where the claimant had been repeatedly instructed over the course of more than a month to perform a specific task and was part of his assigned duties. The employer reminded the claimant on several occasions to perform the task. The employee refused to perform the task on two separate occasions. On both occasions, the employer discussed with the employee a basis for his refusal. The employer waited until after the employee's second refusal, when the employee still neglected to perform the assigned task, and then discharged employee. See *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990).

The evidence in the record establishes a discharge for no disqualifying reason. The weight of the evidence establishes that Ms. Jons' inability to pass the insurance licensure test after five attempts was the primary basis for the discharge. The weight of the evidence establishes that Ms. Jons made a good faith effort in connection with each attempt and in the final attempt faced the added obstacle of acute illness. Ms. Jons' inability to pass the licensing test was not willful and was not misconduct in connection with the employment. The matter concerning the half-way house staff member's conduct was outside Ms. Jons' control and was not misconduct in connection with the employment. The lapse in documenting client payments in the second, online location involved error but was not part of a pattern of carelessness and/or negligence and did not rise to the level of misconduct in connection with the employment. The issue with preparing quote materials was a bona fide misunderstanding on the part of Ms. Jons, rather than refusal to follow a directive. Ms. Jons is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits.

DECISION:

The February 26, 2025 (reference 01) decision is AFFIRMED. The claimant was discharged on January 19, 2025 for no disqualifying reason. The claimant is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged.



James E. Timberland
Administrative Law Judge

March 26, 2025
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
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
Online: 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 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.