

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

EBONY Y WELLS
Claimant

QPS EMPLOYMENT GROUP INC
Employer

APPEAL 24A-UI-01683-PT-T
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 11/19/23
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant, Ebony Wells, filed an appeal from a decision of a representative dated February 6, 2024, (reference 02) that held the claimant ineligible for unemployment insurance benefits after a separation from employment. After due notice, a hearing was held on March 5, 2024. The claimant participated personally. The employer, QPS Employment Group, Inc., participated through Unemployment Specialist Jessica Segner and Recruiter Heather Mangrich. The administrative law judge took official notice of the administrative record.

ISSUES:

Was the claimant discharged for disqualifying, job-related misconduct?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: The claimant began working for QPS Employment Group, Inc. ("Employer") on December 2, 2023. Most recently, she worked full-time hours as a machine operator in an assignment at Waverly Plastics Co. ("Client"). The claimant's employment ended on December 20, 2023, when she was discharged.

The employer maintains a drug and alcohol policy that requires a drug screen post-accident or injury. Refusal to submit to a drug screen is grounds for termination. The claimant received a copy of the policy.

At approximately 9:30 a.m. on December 12, 2023, the claimant reported to her supervisor at Waverly Plastics Co. that she had injured her back while working on a piece of machinery about two-hours earlier. The claimant told her supervisor that she was in too much pain to continue working.

The claimant's supervisor called and informed the employer that the claimant reported sustaining a workplace injury. The recruiter opened a nurse line claim and instructed the supervisor to send the claimant to the employer's office so that the claimant could complete medical paperwork and undergo a post-accident drug screen. The supervisor complied and instructed the claimant to go to the employer's office so that she could fill-out paperwork and

undergo a drug screen. The claimant then left the client's facility. However, the claimant did not go to the employer's office.

At approximately 12:00 p.m. that day, the employer tried calling the claimant to ask why she had not come to the employer's office. However, the claimant's phone was turned off. The employer tried calling the claimant again around 5:00 p.m., but her phone was still turned off.

At 1:00 p.m. on December 13, 2023, the employer called the claimant a third time and spoke with the claimant. During the call, the claimant stated that the day before she had been on her way to the employer's office when she changed her mind and decided to go straight to the hospital. The claimant said that she had been at the hospital all afternoon on December 12. The employer instructed the claimant to come to the employers office to undergo a drug-screen and complete medical paperwork.

The claimant arrived at the employer's office at approximately 2:30 p.m. When she arrived, the employer provided the claimant some paperwork and told her that she needed to undergo a post-accident drug screen. The claimant said that she wanted to first complete the paperwork before doing the drug screen. The claimant then told the employer that her daughter was waiting in her car, so she was going to go to her car and complete the paperwork in her car.

After arriving at her car, the claimant sat in her car for approximately twenty-minutes and then drove away. The employer tried calling the claimant several times to find out where she had gone, but the claimant did not answer or return any of the employer's calls. The claimant never returned to the employer's office and never underwent a post-accident drug screen. Because the claimant would not answer or return the employer's calls, on December 20, 2023, the employer mailed the claimant a letter informing the claimant that her employment was terminated effective immediately for failing to take a post-accident drug screen in violation of the employer's drug and alcohol policy.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct. Benefits are denied.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

Iowa Admin. Code r. 871-24.32(4) provides:

(4) *Report required.* The claimant's statement and employer's statement must give detailed facts as to the specific reason for the claimant's discharge. 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. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

The employer has the burden of proof in establishing disqualifying job-related 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). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). The gravity of the incident, number of policy violations and prior warnings are factors considered when analyzing misconduct. The lack of a current warning may detract from a finding of an intentional policy violation.

When an employee is discharged due to their failure to pass or refusal to submit to drug testing, the employer must comply with Iowa Code § 730.5. If an employer chooses to conduct alcohol or drug testing, it must substantially comply with all the strict requirements of this statute. If an employer has an alcohol or drug testing policy, it must be in writing. Iowa Code § 730.5(9)(a)(1). The policy must have been provided to every employee subject to testing and must be available for review by employees and prospective employees. Iowa Code § 730.5(9)(a)(1).

The decision in this case rests, at least in part, on the credibility of the witnesses. It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts at issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

The findings of fact show how I have resolved the disputed factual issues in this case. I assessed the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using my own common sense and experience. I find the employer's testimony concerning its attempts to contact the claimant, the conversations that took place, and the claimant's awareness of the drug and alcohol policy to be thorough and consistent with other believable evidence. As the claimant's testimony was at times vague, difficult to follow, and internally inconsistent, the administrative law judge has given greater weight to the employer's version of events than to the claimant's version of events.

In this case, the employer has met the requirements of Iowa Code section 730.5. The claimant received a copy of the employer's drug and alcohol use policy. The policy articulates the consequences when an employee refuses to cooperate with the drug screen or receives a positive test result.

The evidence in the record establishes that on December 12, 2023, the claimant reported having sustained a workplace injury. Pursuant to the employer's drug and alcohol policy, the employer instructed the claimant to undergo a post-accident drug screen. Although the claimant did not expressly state that she was refusing the drug screen, the claimant failed to report to the employer's office on December 12, she left the office early without undergoing a drug screen on December 13, and she never returned to the employer's office despite the employer's repeated phone calls. As the claimant failed to undergo the drug screen as requested, pursuant to the employer's drug-free workplace policy, the claimant was discharged from employment. The claimant's conduct constitutes disqualifying misconduct. Benefits must be denied.

DECISION:

The February 6, 2024, (reference 02) unemployment insurance decision is affirmed. The claimant was discharged for substantial job-related misconduct. Unemployment insurance benefits funded by the State of Iowa are denied until the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount after the December 20, 2023, separation date, and provided she is otherwise eligible.

A handwritten signature in cursive script, reading "Patrick B. Thomas".

Patrick B. Thomas
Administrative Law Judge

March 13, 2024
Decision Dated and Mailed

pbt/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:

**Iowa 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:

**Iowa 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.