

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

REBECCA L QUILLEN

Claimant

APPEAL NO. 23A-UI-06806-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC

Employer

OC: 07/07/23

Claimant: Respondent (2)

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

STATEMENT OF THE CASE:

On July 7, 2023, the employer filed a timely appeal from the June 28, 2023 (reference 04) 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 May 19, 2023 for no disqualifying reason.

After due notice was issued to the parties, the appeal hearing commenced at 2:00 p.m. on July 26, 2023. On July 26, the employer representative, Frankie Patterson of Corporate Cost Control, Inc., and employer witnesses Sara Saunders and Lindsey Flanagan, appeared as scheduled. On July 26, Ms. Saunders provided testimony. Rebecca Quillen (claimant) did not appear at the start of the hearing. The claimant appeared at 2:37 p.m., 37 minutes into the hearing. At that time, the claimant asserted she had been unable to appear at the start of the hearing due to her new employer denying her time for the hearing. In addition, the claimant asserted she had been unable to prepare for the hearing due to the recent death of her son. The claimant refused to assist the administrative law judge in determining whether there was good cause to reschedule the hearing. Specifically, the claimant refused to state on the hearing record when her son had passed away. The claimant stated that she intended to have her supervisor, Sue Hirschman, participate in the appeal hearing. Based on the claimant's assertion of the recent passing of a loved one and her assertion that this had prevented her from preparing for the hearing, the administrative law judge adjourned the July 26, 2023 hearing so that the claimant could have additional time to prepare for the appeal hearing.

The hearing was rescheduled for Friday, August 11, 2023 at 10:00 a.m., but did not go forward on that date. The hearing set for August 11, 2023 was rescheduled in response to both parties providing good cause for being unavailable for a hearing on that date. Employer witness Sara Saunders was unavailable on that date due to the need to transport her husband to and from a medical appointment pertaining to a serious health issue. The claimant asserted that her new employer again would not grant her time for the hearing.

The hearing was rescheduled by agreement of the parties to Monday, August 14, 2023. On that date, the claimant appeared and participated. Mr. Patterson again represented the employer and presented testimony through Ms. Saunders. On August 14, 2023, the administrative law

judge repeated the opening statement for the claimant's benefit and summarized Ms. Saunders' July 26, 2023 testimony for the claimant's benefit. On August 14, 2023, the claimant again expressed an interest in providing testimony through Sue Hirschman. The claimant indicated she had learned days during the prior week that Ms. Hirschman was not scheduled to work on August 14, 2023 and, therefore, did not plan to participate in the appeal hearing on that date. The claimant did not request a subpoena to compel Ms. Hirschman's participation. Exhibits 1 through 6 were received into evidence. At the claimant's request, the administrative law judge took official notice of the administrative law judge decision in Appeal Number 23A-UI-05352-B2-T and the Employment Appeal Board decision in Hearing Number 23B-UI-05352. The administrative law judge took official notice of the Iowa Workforce Development record (DBRO) that reflects no benefits have been paid to the claimant for the period subsequent to July 16, 2022.

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:

Rebecca Quillen (claimant) began her most period of employment with the Hy-Vee store in Fort Dodge in 2019 and last performed work for the employer on May 19, 2023. During the last six months of the employment, the claimant worked as a part-time cashier. She was employed by Hy-Vee, Inc. as a part-time cashier. Sue Hirschman, Front End Manager, was the claimant's primary manager. Various shift managers assisted in supervising the claimant's employment.

The claimant discharged the claimant on May 19, 2023. Two final incidents triggered the discharge. On May 17, 2023, the claimant verbally abused a disabled coworker regarding the manner in which the coworker was bagging groceries. The claimant's conduct reduced the coworker to tears. The shift manager on duty, Tatum Krause, documented the incident and reported the matter to Sara Saunders, Human Resources Manager, on May 17, 2023. Ms. Saunders interviewed the disabled coworker and the disabled coworker's job coach as part of her investigation of the matter. On May 18, 2023, a customer complained to customer service regarding the claimant challenging the customer's request to have their groceries bagged in plastic bags, rather than paper. On May 19, 2023, Ms. Saunders interviewed the claimant as part of her investigation of both matters. The claimant denied wrongdoing in connection with both incidents. Based on these two matters and a prior pattern of similar conduct and associated progressive discipline, the employer moved forward with discharging the claimant on May 19, 2023.

The prior conduct that factored in the discharge was addressed by the Appeals Bureau and the Employment Appeal Board in Appeal Number 23A-UI-05352-B2T and Hearing Number 23B-UI-05352. In Appeal Number 23A-UI-05352-B2T, the administrative law judge's findings of fact included the following:

Employer gave claimant a one week suspension on April 17, 2023 because claimant had an alleged bad incident where she had a bad attitude with a customer after multiple previous warnings about bad attitudes. This resulted in a one week suspension.

Claimant worked as a part time cashier and general assistant for employer. While working her duties, claimant received numerous complaints over the last few months

from customers and coworkers about the claimant's attitude. Employer created multiple consultation forms and presented them to claimant addressing the concerns that were raised. On the April 5, 2023 warning, claimant was alerted that additional negative interactions could result in a suspension or termination, in accordance with employer's progressive disciplinary policy.

On April 13, 2023 claimant told a customer that they needed to tell her if they wished to get cash out of their card when paying for groceries, because otherwise the drawer could strike the claimant. She said this in such a way that the customer went to customer service to complain of claimant's attitude in addressing her.

Appeal Number 23A-UI-05352-B2T, page 1. The administrative law judge and the Employment Appeal Board each determined the claimant was suspended for misconduct in connection with the employment and was disqualified for unemployment insurance benefits for the week that ended April 23, 2023. Appeal Number 23A-UI-05352-B2T, page 3; Hearing Number 23B-UI-05352, page 1.

The prior incidents generally referenced in Appeal Number 23A-UI-05352-B2T and addressed at length and in detail in the hearing pertaining to the present matter included the claimant yelling and cursing at Ms. Saunders and calling Ms. Saunders a liar on March 14, 2023 because the claimant was unhappy with a disciplinary suspension imposed at that time. The prior conduct included an incident at the end of February 2023, wherein the claimant yelled to interrupt and disrupt Ms. Hirschman's receipt of a customer's complaint about the claimant. The prior conduct included the claimant asking a customer on March 31, 2023 for \$60.00 to assist the claimant with her daycare expense. The prior conduct included the claimant chastising a customer on April 13, 2023 for not telling the claimant the customer had selected on the transaction keypad to receive additional cash.

The employer's written Code of Conduct required the claimant to be friendly and respectful in her workplace dealings and prohibited the claimant from engaging in disorderly conduct or soliciting money in the course of the employment. The employer provided the written policy to the claimant at the start of the employment. The claimant was at all relevant times aware of the policy.

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.
- ...

Iowa Admin. Code r. 871-24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

- a. For the purposes of this rule, "misconduct" is defined as 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 a 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.
- ...

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 r.871 -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 871 IAC 24.32(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).

Unless appealed in a timely manner and reversed on appeal, a finding of fact or law, judgment, conclusion, or final order made pursuant to this section by an employee or representative of Iowa Workforce Development, administrative law judge, or the employment appeal board, is binding upon the parties in proceedings brought under this chapter. See Iowa Code section 96.6(3) and (4).

The administrative law judge findings of fact, conclusion, and judgment set forth in Appeal Number 23A-UI-05352-B2T and the Employment Appeal Board conclusion and judgment set forth in Hearing Number 23B-UI-05352 are concern the same prior conduct at issue in the present matter and are binding upon the parties in the present matter. Contrary to the claimant's assertion on the August 14, 2023 hearing date, these prior decisions did not exonerate the claimant. They did exactly the opposite. They determined there was a pattern of prior negative demeanor on the part of the claimant directed at customers and staff that rose to the level of misconduct and that led to the one-week suspension in April 2023.

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 in 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 Ct. 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.*

Where the claimant's testimony deviated from the employer's testimony, the employer's testimony was markedly more credible. The claimant made a number of wild assertions during the hearing, especially toward the end of the hearing, when the claimant asserted she is an attorney and was a judge. The claimant would have the administrative law judge believe there is no merit whatsoever to the multiple customer complaints originating from multiple customers and no merit to employer's assertion of a pattern of verbally abusive behavior directed at staff, including Ms. Saunders, and at customers. Reason, common sense, the prior adjudication, and the weight of the evidence presented in the present matter indicate otherwise.

The weight of the evidence establishes a pattern of inappropriate, disrespectful, and disruptive conduct on the part of the claimant indicating a repeated willful and wanton disregard of the employer's interests. The claimant repeatedly, knowingly and intentionally violated the employer's reasonable and uniformly enforced Code of Conduct policy.

Because the evidence in the record establishes a May 19, 2023 discharge for misconduct in connection with the employment, the claimant is disqualified for benefits until she has worked in and been paid wages for insured work equal to 10 times her weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account shall not be

charged for benefits. Because no benefits have been paid to the claimant for the period subsequent to July 16, 2022, there is no overpayment of benefits to address.

DECISION:

The June 28, 2023 (reference 04) decision is REVERSED. The claimant was discharged on May 19, 2023 for misconduct in connection with the employment. The claimant is disqualified for unemployment benefits until she has worked in and been paid wages for insured work equal to 10 times her weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account shall not be charged for benefits.



James E. Timberland
Administrative Law Judge

08/22/23
Decision Dated and Mailed

JET/jkb

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>.

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 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.