

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

JUAN D LOPEZ
Claimant

CITY OF IOWA CITY
Employer

APPEAL 24A-UI-00565-LJ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 12/17/23
Claimant: Respondent (2)**

Iowa Code § 96.5(2)a – Discharge from Employment
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

On January 12, 2024, employer City of Iowa City filed an appeal from the January 5, 2024 (reference 01) unemployment insurance decision that allowed benefits, determining claimant was discharged and the employer failed to establish the discharge was for willful or deliberate misconduct. The Unemployment Insurance Appeals Bureau mailed notice of the hearing on January 18, 2024. Administrative Law Judge Elizabeth A. Johnson held a telephonic hearing at 2:00 p.m. on Wednesday, January 31, 2024. Claimant Juan D. Lopez participated. Employer City of Iowa City participated through witnesses Ronald Knoche, Public Works Director; and Karen Jennings, Human Resources Administrator; and Assistant City Attorney Jennifer Schwickerath represented the employer. Employer's Exhibits 1 through 10 were received and admitted into the record without objection. The administrative law judge took official notice of the administrative record.

ISSUES:

Was the claimant discharged for disqualifying job-related misconduct?
Has the claimant been overpaid unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?
Can charges to the employer's account be waived?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began employment with the City of Iowa City on October 11, 2021. He worked full-time hours as a construction inspector. As a construction inspector, claimant was responsible for functioning as the "eyes and ears" on a job site. He would inspect pavement projects, sewer projects, and other building projects, and he would then report back to the city as to whether the contractor was completing the project and completing it to the proper specifications. Claimant's employment ended on December 12, 2023, when the employer discharged him for violating multiple employment policies. Specifically, claimant failed to include material information on his application for employment; he engaged in conduct that could reflect unfavorably on the City or his department; and he had a firearm in his vehicle that was parked on City property.

On Friday December 1, claimant was arrested while at work. The employer learned about this arrest around the time it happened, and Knoche also saw the arrest reported on the news. When claimant called into work on December 4 to request a vacation day, Knoche asked him to come down to City Hall to discuss his arrest. During the meeting at City Hall, claimant indicated he did not know why he was arrested. When the employer questioned him based on what City employees learned from news reports, claimant acknowledged engaging in illegal activity years prior, but he stated that was over ten years ago and he no longer did that. Concerned with claimant's truthfulness, the employer placed him on administrative leave pending an investigation.

The employer conducted a formal administrative investigation interview with claimant on December 7, 2023. Claimant, union steward Quinton Bryant, Knoche, and Jennings all attended that interview. During the interview, claimant admitted he had a firearm in his vehicle and had parked his vehicle in the Chauncey-Swann City of Iowa City parking ramp on December 1, 2023. Claimant also admitted he intentionally omitted prior employment as a police officer with the City of Muscatine from his application for employment. The employer questioned claimant regarding his December 1 arrest. Claimant attributed the illegal activity he had been arrested for to the prior tenants of his apartment and he had no knowledge of the drugs mailed to his address.

The application claimant completed for his position has an "Employment History" section. The header of this section reads in relevant part:

For background and reference purposes it is necessary that you provide complete addresses for current and previous employers. This includes street name and number, city, state, and zip code. Provide all requested information on prior employment including periods of unemployment. If you have been employed for more than twelve (12) years, please provide a minimum of twelve (12) years employment history.

(Exhibit 3-2) During its investigation, the employer confirmed claimant had formerly worked for the Muscatine Police Department within the twelve-year employment period of inquiry on the application. It obtained claimant's termination notice from the Muscatine Police Department and documentation from claimant's Pre-Discipline Hearing. (Exhibits 4-1, 4-2) That documentation informed the employer that claimant had been discharged for dishonesty during a police investigation, attempting to interfere with such an investigation, and engaging in alleged criminal conduct. (Exhibits 4-1, 4-2)

Based on the concerns with claimant's truthfulness and claimant's multiple policy violations, the employer discharged him from employment. Knoche could no longer trust claimant to go onto job sites, supervise City construction projects, and truthfully and accurately report back on the completion of those projects. Claimant had never been warned for violating any of these policies in the past.

Claimant opened the claim for unemployment insurance benefits effective December 17, 2023. He has filed six weekly continued claims for benefits, for the weeks ending December 23 and December 30, 2023; and January 6; January 13; January 20; and January 27, 2024. Claimant has received benefits in the gross amount of \$3,492.00. Iowa Workforce Development held a fact-finding interview on January 4, 2024. The employer did participate in the fact-finding interview by submitting written documentation that, without rebuttal, would have resulted in disqualification. The written documentation included the notice of claim with completed protest and the December 12, 2023 Termination of Employment memorandum (identical to Exhibit 10).

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged for disqualifying, job-related misconduct. Benefits are withheld.

Separation from Employment

Iowa Code section 96.5(2)(a) and (d) provide:

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 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 even 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...
- (6) Conduct that substantially and unjustifiably endangers the personal safety of coworkers or the general public.

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dept of Job Serv.*, 321 N.W.2d 6 (Iowa 1982).

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 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. The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dept 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 Dept 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 Dept of Job*

Serv., 351 N.W.2d 806 (Iowa Ct. App. 1984). The focus is on deliberate, intentional, or culpable acts by the employee.

Unlike many separations involving dishonesty, this case does not require a credibility determination. Claimant admits he intentionally omitted his employment with the Muscatine Police Department from his employment application, and he admits he brought a firearm onto City property. By omitting his prior employment, claimant misrepresented his background and his character to the City of Iowa City. Knoche, Jennings, and City management had no way of knowing they should inquire with the City of Muscatine. Thus, they had no opportunity to learn of his prior discharge due to dishonesty. Claimant's decision to bring his firearm (via his vehicle) onto City property and leave the firearm unattended and in his vehicle throughout his day put City residents at risk and demonstrated exceedingly poor judgment. I am skeptical of claimant's explanation that he "did not know the firearm was in the car." Regardless, claimant knew the employer's policy prohibited bringing firearms onto City property and there is no requirement in the policy that an employer *intends* to violate it, only that an employee violates it altogether. Claimant's position required the employer to trust him, and claimant's policy violations breached the employer's trust beyond repair. The employer has established claimant was discharged for disqualifying, job-related misconduct when he materially falsified his employment application, engaged in conduct endangering the general public, and violated multiple work rules. Benefits are withheld.

Overpayment, Repayment, and Participation

The next issues to be determined are whether claimant has been overpaid benefits, whether the claimant must repay those benefits, and whether the employer's account will be charged. Iowa Code § 96.3(7)a-b, as amended in 2008, provides:

7. Recovery of overpayment of benefits.
 - a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.
 - b. (1) (a) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. The employer shall not be relieved of charges if benefits are paid because the employer or an agent of the employer failed to respond timely or adequately to the department's request for information relating to the payment of benefits. This prohibition against relief of charges shall apply to both contributory and reimbursable employers.
 - (b) However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

Iowa Admin. Code r. 871-24.10 provides:

Employer and employer representative participation in fact-finding interviews.

(1) "Participate," as the term is used for employers in the context of the initial determination to award benefits pursuant to Iowa Code section 96.6, subsection 2, means submitting detailed factual information of the quantity and quality that if unrebutted would be sufficient to result in a decision favorable to the employer. The most effective means to participate is to provide live testimony at the interview from a witness with firsthand knowledge of the events leading to the separation. If no live testimony is provided, the employer must provide the name and telephone number of an employee with firsthand information who may be contacted, if necessary, for rebuttal. A party may also participate by providing detailed written statements or documents that provide detailed factual information of the events leading to separation. At a minimum, the information provided by the employer or the employer's representative must identify the dates and particular circumstances of the incident or incidents, including, in the case of discharge, the act or omissions of the claimant or, in the event of a voluntary separation, the stated reason for the quit. The specific rule or policy must be submitted if the claimant was discharged for violating such rule or policy. In the case of discharge for attendance violations, the information must include the circumstances of all incidents the employer or the employer's representative contends meet the definition of unexcused absences as set forth in [871—subrule 24.32\(7\)](#). On the other hand, written or oral statements or general conclusions without supporting detailed factual information and information submitted after the fact-finding decision has been issued are not considered participation within the meaning of the statute....

(4) "Fraud or willful misrepresentation by the individual," as the term is used for claimants in the context of the initial determination to award benefits pursuant to Iowa Code section 96.6, subsection 2, means providing knowingly false statements or knowingly false denials of material facts for the purpose of obtaining unemployment insurance benefits. Statements or denials may be either oral or written by the claimant. Inadvertent misstatements or mistakes made in good faith are not considered fraud or willful misrepresentation.

This rule is intended to implement Iowa Code section 96.3(7)"b" as amended by 2008 Iowa Acts, Senate File 2160.

IWD must recover benefits from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. However, the law does not require a claimant to repay overpaid benefits when the overpayment

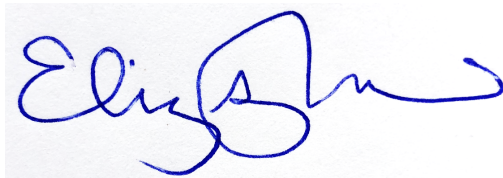
stems from an employer prevailing on the appeal of a claimant receiving benefits after a separation if: (1) the benefits were not received due to claimant committing fraud or willful misrepresentation and (2) the employer did not participate in the initial proceeding to award benefits. The employer will be charged for the benefits paid. Conversely, a claimant must repay their overpayment and the employer will not be charged for benefits paid if it is determined that the employer did participate in the fact-finding interview.

Claimant has received \$3,492.00 in unemployment insurance benefits but was not eligible for those benefits. Claimant has been overpaid benefits. The employer's submission to the deputy provided the dates and circumstances of the incidents leading to claimant's discharge as well as the language of the policies that claimant violated. The employer has met the participation requirements set forth in the administrative rule. Since the employer did participate in the fact-finding interview, the claimant is obligated to repay to the agency the benefits he received and the employer's account shall not be charged.

DECISION:

The January 5, 2024 (reference 01) unemployment insurance decision is reversed. The employer discharged claimant from employment due to job-related misconduct. Benefits are withheld until such time as the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

The claimant has been overpaid unemployment insurance benefits in the amount of \$3,492.00 and is obligated to repay the agency those benefits. The employer did participate in the fact-finding interview and its account shall not be charged.



Elizabeth A. Johnson
Administrative Law Judge

February 6, 2024
Decision Dated and Mailed

lj/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:

**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 adquiera 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.