

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

<p>[REDACTED] Claimant</p> <p>[REDACTED] Employer</p>	<p><b>APPEAL NO. 23A-UI-10479-JT-T</b></p> <p><b>ADMINISTRATIVE LAW JUDGE DECISION</b></p> <p style="text-align: right;"><b>OC: 10/15/23</b> <b>Claimant: Respondent (2)</b></p>
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Iowa Code Section 96.5(2)(a) & (d) – Discharge for Misconduct  
Iowa Code Section 96.3(7) - Overpayment

**STATEMENT OF THE CASE:**

On November 7, 2023, the employer filed a timely appeal from the October 31, 2023 (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 October 11, 2023 for no disqualifying reason. After due notice was issued, a hearing was held on December 18, 2023. Claimant participated. The employer also participated. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant and received Exhibits 1 through 9 into evidence. 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.

The employer submitted an appeal letter and two additional documents as proposed exhibits. The appeal letter and two additional documents all contained confidential information pertaining to a state agency investigation, which information may not be disseminated by the employer nor considered by the administrative law judge in connection with the unemployment insurance matter. The administrative law judge did not mark those items as proposed exhibits and excluded those items from the hearing.

The hearing in this matter was initially scheduled for November 28, 2023. At that time, the administrative law judge ruled that the appeal letter and the two additional documents referenced above would be excluded from the appeal hearing. The hearing was rescheduled to allow the employer additional time to consult with legal counsel regarding the sharing of confidential information and exclusion of said information from the appeal hearing. The *recording* from the November 28, 2023 proceeding and the December 18, 2023 proceeding must be sealed, due to the discussion on both recordings regarding the exclusion of the confidential information.

**ISSUES:**

Whether the claimant was discharged for misconduct in connection with the employment.  
Whether the claimant was overpaid benefits.

Whether the claimant must repay overpaid benefits.  
Whether the employer's account may be charged.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds:

The claimant was employed as a full-time Educational Assistant and cook at a licensed childcare center from 2015 until October 11, 2023, when the employer discharged the claimant from the employment for physically abusing a misbehaving three-year-old child in her care on October 10, 2023. The claimant was a mandatory child abuse reporter and had most recently undergone related training in July 2023. See Exhibits 8 and 9.

On October 10, 2023, the claimant used excessive force when she grabbed the child by the upper arm and led the child to a different area of the childcare room. Soon thereafter, the claimant used excessive force as she grabbed, lifted and carried the child by the upper arms to move the child to a different area of the childcare room. The claimant then used excessive force while placing the child onto the floor. Soon thereafter, the claimant again grabbed and hoisted the child by the upper arms to move the child to different area of the childcare room. The claimant's aggressive and physically abusive interaction with the young child in her care contrasted starkly with a coworker's interaction with another misbehaving child. The claimant's use of force violated the employer's policy prohibiting child abuse. See Exhibit 8. The claimant's actions caused multiple bruises on the child's upper arms. The child's parent's photographed the child's injuries and brought the injuries to the employer's attention. See Exhibits 2 through 5 and 7. The claimant's physically abusive interaction with the child was documented on video surveillance that the employer reviewed and preserved. See Exhibits 1 and 6. The employer promptly discharged the claimant from the employment on October 11, 2023. The October 10, 2023 conduct was the sole basis for the discharge.

The claimant established an original claim for benefits that was effective October 15, 2023 and received \$1,872.00 in benefits for six weeks between October 15, 2023 and December 9, 2023. This employer is the sole base period employer.

On October 30, 2023, the employer participated in the fact-finding interview that led to the October 31, 2023 (reference 01) decision from which the employer appeals in the present matter.

**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.

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

...

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.

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

...

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).

The evidence in the record establishes an October 11, 2023 discharge for misconduct in connection with the employment. On October 10, 2023, the claimant repeatedly and knowingly violated the employer's policy prohibiting child abuse by using unnecessary and excessive force on a three-year-old child in her care. The claimant's conduct substantially and unjustifiably endangered the personal safety of the child in the claimant's care and demonstrated a willful and wanton disregard of the employers interests. 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.

Iowa Code section 96.3(7) provides in relevant part as follows:

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. If the department determines that an employer's failure to respond timely or adequately was due to insufficient notification from the department, the employer's account shall not be charged for the overpayment.

(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.

The claimant received \$1,872.00 in benefits for six weeks between October 15, 2023 and December 9, 2023, but this decision disqualifies the claimant for those benefits. The benefits the claimant received are an overpayment. Because the employer participated in the fact-finding interview, the claimant must repay the overpaid benefits. The employer's account will be relieved of charges, including charge for benefits already paid to the claimant.

**DECISION:**

The October 31, 2023 (reference 01) decision is REVERSED. The claimant was discharged on October 11, 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 claimant is overpaid \$1,872.00 in benefits for six weeks between October 15, 2023 and December 9, 2023. The claimant must repay the overpaid benefits. The employer's account is relieved of charges, including charge for benefits already paid to the claimant.



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James E. Timberland  
Administrative Law Judge

December 22, 2023  
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.