

**IOWA DEPARTMENT OF INSPECTIONS AND APPEALS
ADMINISTRATIVE HEARINGS DIVISION, UI APPEALS BUREAU**

CLAIMANT

APPEAL 22A-UI-18219-DZ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

EMPLOYER

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APPELLANT

Employer

OC: 09/18/22

Claimant: Respondent (1)

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

Iowa Code § 96.3(7) – Recovery of Benefit Overpayment

Iowa Admin. Code r. 871-24.10 – Employer Participation in Fact-Finding Interview

STATEMENT OF THE CASE:

The employer/appellant filed an appeal from the Iowa Workforce Development (IWD) October 11, 2022, (reference 01) unemployment insurance (UI) decision. The decision allowed REGULAR (state) UI benefits because IWD concluded that the employer had dismissed claimant from work on September 22, 2022 for a non-disqualifying reason. The parties were properly notified of the hearing. A telephone hearing was held on November 10, 2022. The employer participated. Claimant did not participate in the hearing. The administrative law judge took official notice of the administrative record and admitted Employer's Exhibit 1 as evidence.

ISSUE:

Did the employer discharge claimant from employment for disqualifying job-related misconduct?

Was claimant overpaid benefits?

If so, should claimant repay the benefits?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: Claimant began working for the employer on August 7, 2017. Claimant worked as a full-time program supervisor as of June/July 2021. Claimant's employment ended on September 22, 2022.

On August 5, 2022, Claimant reported to the employer that a person claimant was providing services to had injured claimant. The employer asked claimant if claimant needed to see a worker's compensation (comp) provider and claimant said no. On August 6, claimant told the employer that claimant went to the emergency room and received stitches from the incident the previous day. The employer told claimant that the proper procedure for a workplace injury is for claimant to contact the employer's third-party worker comp administrator. On August 8, the employer asked claimant if claimant had contacted the employer's third-party worker comp administrator. Claimant said that claimant did not want to make a claim because claimant was scared that the employer would discipline claimant for the interaction with the person who had injured claimant. On August 9, the employer raised the issue with claimant again. Claimant

said that the injury did not happen at work, but it happened outside of work, and claimant was confused when claimant initially reported the injury because of a medical issue. The employer asked claimant if claimant was okay at that time. Claimant said yes.

On August 27, 2022, claimant was the supervisor on call. Claimant went to help an employee calm a situation. A resident told claimant that two employees were using drugs. Claimant investigated the matter and concluded that was no evidence of drug use by the employees. Claimant reported the incident to the employer. During the investigation an employee told claimant that a resident had told that employee that claimant's partner, who also worked for the employer, was sharing drugs with residents. Claimant's partner was not at work that day. At home, claimant asked claimant's partner about the allegation, which claimant's partner denied. Claimant did not report this allegation to the employer.

On August 29, the employer gave claimant a final written warning for not giving the employer clear information about claimant's injury on August 5. The employer concluded that claimant's unclear report about the injury caused the employer to do more work. The employer also concluded that claimant had violated the employer's policy that requires employees to report work-related injuries to the employer to be eligible for worker's comp benefits because claimant had not filed a worker's comp claim.

On September 6, the employer opened an investigation into the drug use allegation that claimant had reported on August 27. The employer talked with residents, employees, claimant and claimant's manager. Claimant told the employer that claimant did not report the allegation against claimant's partner because claimant was not the supervisor of claimant's partner per the employer's conflict-of-interest policy, and claimant did not want to violate that policy.

During the investigation, claimant reported that at a June 2022 work event claimant heard one employee (Employee A) tell another employee (Employee B) that Employee A had used drugs. Claimant did not tell claimant's manager about this incident, but claimant told Employee B's supervisor about the incident. Claimant told the employer that claimant did not report the incident because claimant did not want to be seen as a snitch and claimant had told the employee's supervisor.

The employer concluded that claimant had failed to report the June 2022 and August 27 incidents to the employer and/or the Iowa Department of Human Services (DHS) even though claimant was aware of the employer's policy that required claimant to make such a report. The employer terminated claimant's employment on September 22 because the employer concluded claimant had violated the employer's policies and the employer had given claimant a final warning on August 29.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the employer discharged claimant from employment for no disqualifying reason.

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 individual shall be disqualified for benefits 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 such 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.

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.

The Iowa Supreme Court has held that this definition accurately reflects the intent of the legislature. *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof in establishing disqualifying job 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 from employment, 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). Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984).

In an at-will employment environment an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, it incurs potential liability for unemployment insurance benefits related to that separation. 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 employer's policy or rule 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.

In this case, claimant did report the June 2022 and August 27 incidents to the employer. Claimant substantially complied with the employer's policy. Claimant explained why claimant did not report the allegation against claimant's partner. This isolated incident of poor judgment does not rise to the level of misconduct. Since the employer has not established job-related misconduct, benefits are allowed.

Since claimant is eligible for UI benefits, the issues of overpayment, repayment and chargeability are moot.

DECISION:

The October 11, 2022 (reference 01) UI decision is AFFIRMED. The employer discharged claimant from employment for no disqualifying reason. Benefits are allowed, provided claimant is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.



Daniel Zeno
Administrative Law Judge

November 18, 2022
Decision Dated and Mailed

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APPEAL RIGHTS. If you disagree with this 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> 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:

**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 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.