

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

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**ALICIA MACKENBURG**

Claimant

**COLONIAL MANOR OF ELMA INC**

Employer

**APPEAL 23A-UI-06105-DZ-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 05/14/23**

**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

Alicia Mackenburg, the claimant/appellant,<sup>1</sup> filed an appeal from the Iowa Workforce Development (IWD) June 8, 2023 (reference 01) unemployment insurance (UI) decision. The decision denied Ms. Mackenburg REGULAR (state) UI benefits because IWD concluded that the employer discharged her from work on May 18, 2023 for insubordination. On June 20, 2023, the Iowa Department of Inspections, Appeals, and Licensing, UI Appeals Bureau mailed a notice of hearing to Ms. Mackenburg and the employer for a hearing scheduled for July 6, 2023.

The undersigned administrative law judge held a telephone hearing on July 6, 2023. Ms. Mackenburg participated personally. Debra Lane, the employer's current assistant director of nursing, participated as a witness for Ms. Mackenburg. The employer participated through CaLee Andera, provisional administrator and Jennifer Smith, human resources coordinator. The undersigned admitted Claimant's Exhibits A-C as evidence.

**ISSUE:**

Did the employer discharge Ms. Mackenburg from employment for disqualifying, job-related misconduct?

**FINDINGS OF FACT:**

Having reviewed the evidence in the record, the administrative law judge finds: Ms. Mackenburg began working for the employer on January 3, 2022. She worked as a full-time Medicare coordinator. Her employment ended on May 18, 2023.

About six months after her hire date, Ms. Mackenburg gave the employer a doctor's note that stated Ms. Mackenburg should work first shift and not swing shifts because working swing shifts is detrimental to her mental health. Both before and after she gave the employer the doctor's note, Ms. Mackenburg picked up shifts, when she was available, and worked on-call as part of the on-call rotation. While on call, Ms. Mackenburg received telephone calls and responded when she was able to, but she never worked a shift while on call. Ms. Mackenburg was an hourly employee and the employer paid her for the time she worked while on call.

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<sup>1</sup> Claimant is the person who filed the UI claim with IWD. Appellant is the person or employer who filed the appeal.

On May 11, Ms. Andera, the director of nursing (DON), Ms. Mackenburg and Ms. Lane met to discuss covering shifts in the upcoming days. Ms. Mackenburg reported to the DON. So does Ms. Lane. The DON reports to Ms. Andera, so Ms. Andera was Ms. Mackenburg's two-up manager. The conversation became about the on-call rotation schedule. Ms. Andera proposed that employees who were on-call be required to be available via cell phone, answer their cell phone, be within a reasonable distance to work, and be available to come to work, if needed. After discussing the proposal, Ms. Andera agreed to not make any changes yet and to reconvene the group later to continue the conversation.

Ms. Mackenburg raised concerns about Ms. Andera's proposed changes to the DON. Ms. Mackenburg, the DON, and Ms. Andera met on May 17 to discuss Ms. Mackenburg's concerns. This was not the follow-up meeting to the May 11 team meeting. Ms. Andera told Ms. Mackenburg that Ms. Mackenburg had to have cell phone service and be available while on-call. In response to Ms. Mackenburg's question about pay, Ms. Andera stated that the employer would pay Ms. Mackenburg for time she worked while on call. Ms. Mackenburg considered the entire time she was on call as working time. Ms. Mackenburg suggested that she could work every third weekend and her manager, the DON, could be on call. Ms. Andera declined this offer.

Ms. Mackenburg considered the employer's proposed changes to be against the law because, in her view, the employer wanted her to be available to work (on call) but did not want to pay her for being available. Ms. Mackenburg was also concerned that the employer proposed changes would mean she would have to violate her doctor's note. Ms. Mackenburg told Ms. Andera that she would not disrupt her life to be available while on-call, and if the employer required her to do so she would take herself out of the on-call rotation. Ms. Mackenburg also told Ms. Andera that Ms. Andera could not make Ms. Mackenburg do anything. Ms. Andera asked Ms. Mackenburg to leave the room. Ms. Mackenburg did so.

The employer's policy requires employees to work cooperatively with their manager, be kind and supportive and accept assigned tasks. Ms. Mackenburg acknowledged receiving a copy of the policy. On May 18, the employer terminated Ms. Mackenburg's employment for insubordination.

#### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the undersigned concludes the employer discharged Ms. Mackenburg from employment for job-related misconduct.

Iowa Code section 96.5(2)(a) and (d) provide, in relevant part:

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.

The employer has the burden of proof in establishing disqualifying job misconduct.<sup>2</sup> 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.<sup>3</sup> Misconduct must be "substantial" to warrant a denial of job insurance benefits.<sup>4</sup>

Continued failure to follow reasonable instructions constitutes misconduct.<sup>5</sup> But, an employee's failure to perform a specific task may not constitute misconduct if such failure is in good faith.<sup>6</sup> The undersigned must analyze situations involving alleged insubordination by evaluating the reasonableness of the employer's request in light of the circumstances, along with the worker's reason for non-compliance.<sup>7</sup> Good faith under this standard is not determined by the claimant's subjective understanding. Good faith is measured by an objective standard of reasonableness. Otherwise, benefits might be paid to someone whose "behavior is in fact grounded upon some sincere but irrational belief and where the behavior may be properly deemed misconduct."<sup>8</sup> "The key question is what a reasonable person would have believed under the circumstances."<sup>9</sup>

In this case, Ms. Mackenburg's statements to Ms. Andera, her two-up manager, during the May 17 meeting – that Ms. Mackenburg would not disrupt her life to be available while on-call, would take herself out of the on-call rotation, and that Ms. Andera could not make Ms. Mackenburg do anything – are not justified by objective good faith. Ms. Andera's proposed changes were reasonable. Ms. Mackenburg's response was to tell her two-up manager that she could not make Ms. Mackenburg do anything. This is insubordination. UI benefits are denied.

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<sup>2</sup> *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982).

<sup>3</sup> *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984).

<sup>4</sup> *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984).

<sup>5</sup> See *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990).

<sup>6</sup> See *Woods v. Iowa Department of Job Service*, 327 N.W.2d 768, 771 (Iowa 1982).

<sup>7</sup> See *Endicott v. Iowa Department of Job Service*, 367 N.W.2d 300 (Iowa Ct. App. 1985).

<sup>8</sup> *Aalbers v. Iowa Department of Job Service*, 431 N.W.2d 330, 337 (Iowa 1988).

<sup>9</sup> *Aalbers v. Iowa Department of Job Service*, 431 N.W.2d 330, 337 (Iowa 1988); accord *O'Brien v. EAB*, 494 N.W.2d 660 (Iowa 1993)(objective good faith is test in quits for good cause).

**DECISION:**

The June 8, 2023 (reference 01) UI decision is AFFIRMED. The employer discharged Ms. Mackenburg from employment for job-related misconduct. Benefits are denied until Ms. Mackenburg has worked in and been paid wages for insured work equal to ten times her weekly UI benefit amount, as long as no other decision denies her UI benefits.



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Daniel Zeno  
Administrative Law Judge

July 11, 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  
4<sup>th</sup> 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.