

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

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**MARCELLA M WEAVER**  
Claimant

**CRST LINCOLN SALES INC**  
Employer

**APPEAL NO. 23A-UI-05799-JT-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 05/07/23  
Claimant: Appellant (2)**

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

**STATEMENT OF THE CASE:**

On June 5, 2023, Marcella Weaver (claimant) filed a timely appeal from the June 1, 2023 (reference 01) decision that disqualified the claimant for benefits and that relieved the employer's account of liability for benefits, based on the deputy's conclusion that the claimant was discharged on May 12, 2023 for excessive unexcused absenteeism after being warned. After due notice was issued, a hearing was held on June 27, 2023. Claimant participated. The employer did not comply with the hearing notice instructions to call the designated toll-free number at the time of the hearing and did not participate. Exhibit A, the online appeal, was received into evidence.

**ISSUE:**

Whether the claimant was discharged for misconduct in connection with the employment that disqualifies the claimant for unemployment insurance benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Marcella Weaver (claimant) was employed by CRST Lincoln Sales, Inc. as a full-time Maintenance Coordinator from April 2022 until May 12, 2023, when the employer discharged her for attendance. The claimant's work hours were 1:00 p.m. to 10:00 p.m., Tuesday through Saturday. The claimant received a one-hour lunch break. The claimant was required to clock out for lunch and clock back in when she returned to work. The employer allowed employees a seven-minute grace period, by which an employee could clock in up to seven minutes early or seven minutes late and still be deemed to have reported for work on time.

The final alleged absence that triggered the discharge occurred on April 29, 2023. On that day, the claimant clocked out for lunch at 5:03 p.m. The claimant remained at her workstation for most of her lunch hour, but visited the restroom towards the end of her lunch hour. The claimant returned to her workstation at 6:05 p.m. and resumed performing work duties at that time. The claimant initially forgot to clock in. At 6:15 p.m., the claimant remembered she had not clocked in and clocked in at that time. The claimant was busy with incoming phone calls until about 6:35 p.m. and at that time contacted her supervisor to have him fix her clock in time. The

claimant on prior occasions contacted the supervisor to correct her clock in errors without incurring discipline.

The claimant did not hear further from the supervisor until May 9 or 10, 2023, when the supervisor corresponded with the claimant to request clarification of the April 29, 2023 clock in issue. The claimant invited the supervisor to discuss the matter further.

On May 12, 2023, the supervisor notified the claimant prior to the start of her shift that the employer was discharging her from the employment due to attendance and that the employer deemed the April 29, 2023 incident to be the final absence that placed the claimant over the allowable number of occurrence points. This was the first time the employer had mentioned that the April 29, 2023 matter could or would result in discharge from the employment. The employer had waited nine work days to share this information with the claimant. The employer did not cite other specific absences when making the decision to discharge the claimant from the employment.

At the time of the employer discharged the claimant, the claimant had been receiving workplace accommodations following an extended illness-related absence. The claimant had returned to work on or about March 11, 2023, following the extended absence.

#### **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.

(...)

(9) Excessive unexcused tardiness or absenteeism.

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.

...  
(9) Excessive unexcused tardiness or absenteeism.

...

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 871 IAC 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 Iowa Administrative Code rule 871-24.32(4).

The evidence in the record establishes a May 12, 2023 discharge for no disqualifying reason. The employer did not participate in the appeal hearing. The employer did not present any evidence to rebut the claimant’s testimony. The employer did not present any evidence to meet the employer’s burden of proving a discharge for misconduct in connection with the employment. The evidence in the record fails to establish misconduct in connection with the employment, whether based on attendance or some other conduct. The evidence does not indicate an absence on April 29, 2023, the event the employer told the claimant was the final absence that triggered the discharge. The evidence indicates the claimant returned from lunch in a timely manner, within the employer-prescribed grace period, immediately commenced working, and merely forgot to clock back in until 10 minutes after she resumed her work duties. The claimant clocked in at that time, continued to perform her duties, and when she had a break

in the workflow alerted the supervisor. The employer has presented no evidence to prove otherwise. The claimant is eligible for benefits, provided the claimant is otherwise eligible. The employer's account may be charged for benefits.

**DECISION:**

The June 1, 2023 (reference 01) decision is REVERSED. The claimant was discharged on May 12, 2023 for no disqualifying reason. The claimant is eligible for benefits, provided the claimant is otherwise eligible. The employer's account may be charged for benefits.



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James E. Timberland  
Administrative Law Judge

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June 29, 2023  
Decision Dated and Mailed

r/s

**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>.

**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.