

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

BRANDON J HOLMES
Claimant

APPEAL 23A-UI-10882-S2-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

SIoux CITY COMMUNITY SCHOOL DIST
Employer

**OC: 10/22/23
Claimant: Respondent (2)**

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quit
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

STATEMENT OF THE CASE:

The employer filed an appeal from the November 14, 2023, (reference 01) unemployment insurance decision that allowed benefits based upon a finding that claimant was discharged but there was no showing of willful or deliberate misconduct. The parties were properly notified about the hearing. A telephone hearing was held on December 11, 2023. Claimant Brandon Holmes did not participate. Employer Sioux City Community School District participated through assistant director of human resources Stefanie Verros and director of human resources Jen Gomez. Employer's Exhibits 1 – 5 were received. The administrative law judge took official notice of the administrative record.

ISSUES:

Did claimant voluntarily leave the employment without good cause attributable to the employer or did employer discharge the claimant for reasons related to job misconduct sufficient to warrant a denial of benefits?

Has the claimant been overpaid unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed part-time as a football coach from April 24, 2018, and was separated from employment on October 25, 2023, when he resigned.

Employer maintains policies requiring employees who become aware of harassment or bullying of students to report such information to a supervisor, human resources, or Title IX coordinator. (Exhibit 5). Claimant was aware of these policies. (Exhibit 3).

On October 19, 2023, employer learned a student suffered unwanted physical action by other students in the locker room before football practice on October 18, 2023. The student told

administration he had reported the incident to claimant; specifically, he told claimant he had been jumped in the locker room before practice. Employer investigated the matter, and claimant admitted that the student told him. Claimant also admitted he did not ask the student any follow-up questions to get additional details, nor did he report the incident to administration or human resources.

During the investigation, employer also learned about an incident occurring in the locker room involving claimant. A student recorded on his cell phone an interaction between claimant and a student athlete during a meeting involving coaches and players. In the video, claimant engaged in unprofessional communication with a student. He kicked the student off the team and repeatedly told him to “get the f*** out” of the locker room.

Employer gave claimant the option being terminated for violating its policies on harassment and bullying or he could submit his resignation. Claimant chose to resign. He submitted a resignation effective October 25, 2023. (Exhibit 1).

Employer disciplined claimant in 2021 for grabbing a student by his backpack, pulling him backwards, and having a stern conversation in front of other students and staff.

The administrative record reflects that claimant has not received any unemployment since filing a claim with an effective date of October 22, 2023. Employer did not participate in the fact-finding interview but submitted a written statement instead of providing live testimony.

REASONING AND CONCLUSIONS OF LAW:

In this case, claimant resigned in lieu of termination. Claimant would have been terminated had he not resigned. Therefore, this case will be analyzed as a termination.

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

Iowa Code § 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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.

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

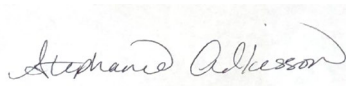
disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree 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.

Employer terminated claimant because he received a report of a student athlete being "jumped" by other students in the locker room but did nothing with this report. Not only did he fail to bring the matter of a student being attacked by other students to a supervisor or to human resources, he also did not ask any questions of the student making the allegation. Further, a student took a video showing claimant repeatedly swearing at a student. In his position as a coach, claimant should have been setting a positive example, upholding the employer's policies, and promoting the employer's best interests. Claimant's actions of swearing at a student and failing to investigate and report bullying and harassment were in violation of employer's policies and in clear disregard of employer's interests. Employer established claimant was terminated for misconduct. Benefits are denied.

Because no benefits were paid to claimant, the issues of overpayment, repayment and chargeability are moot.

DECISION:

The November 14, 2023, (reference 01) unemployment insurance decision is reversed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The issues of overpayment, repayment and chargeability are moot.



Stephanie Adkisson
Administrative Law Judge

December 14, 2023
Decision Dated and Mailed

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.