

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

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**JEFFREY HARBAUGH**  
Claimant

**RUDD SANITATION INCORPORATED**  
Employer

**APPEAL 23A-UI-06274-AR-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 05/14/23  
Claimant: Respondent (1)**

Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Code § 96.5(2)b, c – Gross Misconduct  
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:**

On June 20, 2023, the employer filed an appeal from the June 16, 2023, (reference 02) unemployment insurance decision that allowed benefits based upon the determination that claimant was discharged from part-time employment, but that he had sufficient wage credits from other employment to qualify for unemployment insurance benefits. Wage credits from this employer were removed from claimant's claim for benefits, and the employer's account was determined not to be chargeable. The employer appealed the decision because it asserts claimant engaged in gross misconduct. The parties were properly notified of the hearing. A telephone hearing was held on July 31, 2023. The claimant, Jeffrey Harbaugh, did not participate. The employer, Rudd Sanitation, participated through President Lori Prucha. Employer's Exhibits 1 and 2 were admitted. The administrative law judge took official notice of the administrative record.

**ISSUES:**

Was the claimant discharged for disqualifying job-related misconduct?  
Was the claimant discharged for gross misconduct?  
Has the claimant been overpaid unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?  
Can charges to the employer's account 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 mechanic from August 4, 2021, until this employment ended on May 19, 2023, when he was discharged.

On approximately May 4, 2023, the employer received a subpoena regarding claimant from the Iowa Department of Human Services (DHS) regarding a food stamp issue. The subpoena was followed by a call from DHS. The DHS representative spoke with Prucha and told her that the form DHS received was signed by Zachary Prucha. Zachary Prucha is not authorized to

complete such forms. Prucha called Zachary Prucha who did not know anything about the form. The employer requested a copy of the form allegedly signed by Zachary Prucha, but it did not receive a copy of the form.

On May 19, 2023, the employer confronted claimant about the issue. Claimant said his wife had completed the form and this was not the first time she had done something like that. The employer told claimant that it could not continue his employment because of the forged signature issue. The employer discharged claimant from employment on May 19, 2023. Claimant signed a separation from that read, "Jeff Harbaugh is being let go from Rudd Sanitation Inc due to forgery of signature on documents." There is no indication in publicly available records that criminal charges have been filed in this matter.

The administrative record indicates that claimant filed a claim for unemployment insurance benefits with an effective date of May 14, 2023. Since that date, he has filed for and received \$0.00 in unemployment insurance benefits. This employer's account has been determined not to be chargeable, however, it did participate in the fact-finding interview.

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

For the reasons that follow, the administrative law judge concludes claimant was discharged from part-time employment for a disqualifying reason, but not for gross misconduct.

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 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 even 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:

(1) Material falsification of the individual's employment application.

(2) Knowing violation of a reasonable and uniformly enforced rule of an employer.

- (3) Intentional damage of an employer's property.
- (4) Consumption of alcohol, illegal or nonprescribed prescription drugs, or an impairing substance in a manner not directed by the manufacturer, or a combination of such substances, on the employer's premises in violation of the employer's employment policies.
- (5) Reporting to work under the influence of alcohol, illegal or nonprescribed prescription drugs, or an impairing substance in an off-label manner, or a combination of such substances, on the employer's premises in violation of the employer's employment policies, unless the individual is compelled to work by the employer outside of scheduled or on-call working hours.
- (6) Conduct that substantially and unjustifiably endangers the personal safety of coworkers or the general public.
- (7) Incarceration for an act for which one could reasonably expect to be incarcerated that results in missing work.
- (8) Incarceration as a result of a misdemeanor or felony conviction by a court of competent jurisdiction.
- (9) Excessive unexcused tardiness or absenteeism.
- (10) Falsification of any work-related report, task, or job that could expose the employer or coworkers to legal liability or sanction for violation of health or safety laws.
- (11) Failure to maintain any license, registration, or certification that is reasonably required by the employer or by law, or that is a functional requirement to perform the individual's regular job duties, unless the failure is not within the control of the individual.
- (12) Conduct that is libelous or slanderous toward an employer or an employee of the employer if such conduct is not protected under state or federal law.
- (13) Theft of an employer or coworker's funds or property.
- (14) Intentional misrepresentation of time worked or work carried out that results in the individual receiving unearned wages or unearned benefits.

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).

Iowa Code section 96.5(2)*b* and *c* provides:

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:

b. Provided further, if gross misconduct is established, the department shall cancel the individual's wage credits earned, prior to the date of discharge, from all employers.

c. Gross misconduct is deemed to have occurred after a claimant loses employment as a result of an act constituting an indictable offense in connection with the claimant's employment, provided the claimant is duly convicted thereof or has signed a statement admitting the commission of such an act. Determinations regarding a benefit claim may be redetermined within five years from the effective date of the claim. Any benefits paid to a claimant prior to a determination that the claimant has lost employment as a result of such act shall not be considered to have been accepted by the claimant in good faith.

Under Iowa Code section 96.5(2)(b) "if gross misconduct is established, the department shall cancel the individual's wage credits earned, prior to the date of discharge, from all employers." The cancellation of wage credits means that, even if the claimant earns ten times the benefit amount following the discharge from this employer, he may never collect benefits chargeable to the employer. The parties should be aware that a determination of gross misconduct "may be redetermined within five years from the effective date of the claim." Iowa Code § 96.5(2)(c). Thus, the issue of gross misconduct might be determined in the future.

The reason claimant was discharged is a disqualifying reason. However, because he has been determined to be eligible based on wage credits from other employment, and because this is part-time employment, the wage credits earned with this employer have been removed from claimant's claim for benefits and this employer's account is not chargeable for any benefits paid to claimant.

The employer asserts that claimant engaged in gross misconduct and that the separation form constitutes "a signed statement admitting the commission of such an act." The administrative law judge disagrees. The separation statement signed by claimant did not directly attribute the forged signature issue to claimant, and claimant provided a statement at the time of his discharge indicating that he had not been the person who committed the act. Because there has been no conviction of an indictable offense or an explicit admission of guilt signed by claimant, the employer has not established gross misconduct such that all wage credits should be removed from claimant's claim for benefits.

The claimant remains eligible to receive unemployment insurance benefits based on wages earned with other employers. The employer's account shall not be charged for benefits paid to claimant, as was established in the decision appealed. The issues of overpayment, repayment, and participation are moot.

**DECISION:**

The June 16, 2023, (reference 02) unemployment insurance decision is AFFIRMED. Claimant is eligible to receive unemployment insurance benefits based on wages earned with other employers on his claim. Wages earned with this employer have been and remain removed. The employer's account shall not be charged for benefits paid to claimant. The issues of overpayment, repayment, and participation are moot.



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Alexis D. Rowe  
Administrative Law Judge

August 1, 2023  
Decision Dated and Mailed

ar/scn

**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](http://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](http://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 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.