

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

**JACOB M FISCHER**  
Claimant

**COTTAGE GROVE PLACE**  
Employer

**APPEAL 24A-UI-02582-LJ**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 01/28/24**  
**Claimant: Appellant (1)**

Iowa Code § 96.5(2)a – Discharge from Employment

**STATEMENT OF THE CASE:**

On March 4, 2024, claimant Jacob M. Fischer filed an appeal from the February 29, 2024 (reference 03) unemployment insurance decision that denied benefits, determining claimant was discharged on February 15, 2023 due to a failure to follow instructions.

The Unemployment Insurance Appeals Bureau mailed notice of the hearing on April 3, 2024. Administrative Law Judge Elizabeth A. Johnson held an in-person hearing in Cedar Rapids at 8:30 a.m. on Thursday, April 18, 2024. Claimant Jacob M. Fischer participated. Employer Cottage Grove Place participated through Samantha Barnes, Human Resources Director; and Josh Spalding, Executive Chef. Barnes acted as the employer's representative.

Claimant's Exhibits A, B, P, and Z and Employer's Exhibits 1, 2, and 3 was received and admitted into the record. Claimant's Exhibit C, also referred to as Exhibit E – the email listing an fda.gov website for the administrative law judge and employer to review – was not admitted into the record as it was not appropriate material to admit as an exhibit. The administrative law judge took official notice of the administrative record.

**ISSUE:**

Whether claimant was discharged from employment for disqualifying, job-related misconduct.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for Cottage Grove Place on October 3, 2023. He worked full-time hours for the employer as a utility worker/dishwasher. Claimant's employment ended on December 14, 2023, when Spalding and Barnes discharged him due to a continued failure to follow instructions.

Claimant struggled to focus on his own job duties during his employment. Often times, he was more focused on what other employees were doing, and the employer frequently found him leaving his work station and coming to the Human Resources office during his shift to report concerns about his coworkers. Claimant was concerned about employees on their cell phones and how that created a food safety issue. He also reported what he believed were inaccurate online trainings. Claimant was not a supervisor. If he had concerns about coworkers, he was

expected to follow the proper chain of command and address concerns with management in the kitchen.

Claimant received multiple disciplinary actions from Spalding due to his failure to focus on his job duties and follow the employer's instructions. On October 27, 2023, the employer issued claimant a verbal disciplinary action for pointing out his coworkers' errors and snapping at management in the kitchen. (Exhibit 2, page 1) On November 2, 2023, the employer issued claimant a written disciplinary action for speaking disrespectfully to sous chef Shaun. (Exhibit 2, page 3) On November 6, 2023, the employer issued claimant a final written warning for becoming upset with someone taking a clean dish off the clean dish rack, then having an outburst over an alleged fire safety issue. (Exhibit 2, pages 4-5) Claimant was upset, agitated, raising his voice, and banging items around the kitchen. On this occasion, the employer had to stop dinner service to address claimant's concerns, explain that his concerns did not amount to actual food safety or fire safety issues, and redirect him to focus on his actual job responsibilities. (Spalding testimony)

Claimant's behavior did not improve after the final written warning. He continued raising his personal concerns about coworkers, concerns that did not amount to actual food safety issues. He insisted on trying to police everyone else at work and could not focus on the tasks assigned to him. Claimant would interrupt dinner service by approaching Spalding with issues such as an employee standing and not working, or a concern with how work was allocated. This happened two or three times each day. Spalding personally told claimant multiple times that his job was in jeopardy and his behavior needed to change.

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

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for disqualifying, job-related misconduct. Benefits are withheld.

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).

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 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. The issue is not whether the employer made a correct decision in separating claimant, 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). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). The focus is on deliberate, intentional, or culpable acts by the employee.

The Iowa Court of Appeals found substantial evidence of misconduct in testimony that the claimant worked slower than he was capable of working and would temporarily and briefly improve following oral reprimands. *Sellers v. Emp't Appeal Bd.*, 531 N.W.2d 645 (Iowa Ct. App. 1995). Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990). Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988).

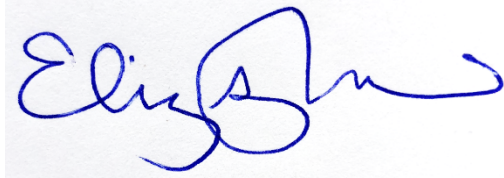
"[W]illful misconduct can be established where an employee manifests an intent to disobey the reasonable instructions of his employer." *Myers v. IDJS*, 373 N.W.2d 507, 510 (Iowa 1983) (quoting *Sturniolo v. Commonwealth, Unemployment Compensation Bd. of Review*, 19 Cmwlth. 475, 338 A.2d 794, 796 (1975)); *Pierce v. IDJS*, 425 N.W.2d 679, 680 (Iowa Ct. App. 1988). In insubordination cases, the reasonableness of the employer's demand in light of the circumstances must be evaluated, along with the worker's reason for non-compliance. See *Endicott v. Iowa Department of Job Service*, 367 N.W.2d 300 (Iowa Ct. App. 1985). The key to such cases is not the worker's subjective point of view but "what a reasonable person would have believed under the circumstances." *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).

The parties largely agree on the circumstances leading to the end of employment. Claimant struggled to focus on his own job duties during the work day, instead spending his time watching and reporting what his coworkers were and were not doing. The employer had issued claimant disciplinary actions for this behavior and had made claimant aware that his behavior needed to change if he wanted to keep his job. Claimant simply disagreed with what the scope of his job was, framing his reports to management as looking out for food safety and not simply policing other employees.

The issue is that claimant was not responsible for ensuring the employer complied with best practices for food safety. While claimant's intentions may have been good, he had been instructed to stop watching what his coworkers were doing and focus only on his own work. Claimant did not do this. He continued watching and reporting his coworkers, bothering Spalding and other management between two and three times a day with his observations. The employer's request to claimant was reasonable, and claimant's refusal to comply with the request was not. The employer has established that claimant engaged in disqualifying, job-related misconduct. Benefits must be withheld.

**DECISION:**

The February 29, 2024 (reference 03) unemployment insurance decision is affirmed. The employer discharged claimant from employment due to job-related misconduct. Benefits are withheld until such time as the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.



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Elizabeth A. Johnson  
Administrative Law Judge

April 22, 2024  
Decision Dated and Mailed

lj/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:

**Iowa Employment Appeal Board  
6200 Park Avenue Suite 100  
Des Moines, Iowa 50321  
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:

**Iowa Employment Appeal Board  
6200 Park Avenue Suite 100  
Des Moines, Iowa 50321  
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.