

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

---

**CHRISTIAN A BOWER**  
Claimant

**MC WANE INC**  
Employer

**APPEAL 23A-UI-08608-DZ-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 01/15/23**  
**Claimant: Appellant (2)**

---

Iowa Code § 96.6(2) – Timely Appeal  
Iowa Code § 96.5(2)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Christian A. Bower, the claimant/appellant,<sup>1</sup> appealed the Iowa Workforce Development (IWD) February 8, 2023 (reference 01) unemployment insurance (UI) decision. IWD denied Mr. Bower REGULAR (state) UI benefits because IWD concluded the employer discharged him from work on January 12, 2023 for excessive unexcused absenteeism and tardiness after the employer warned him. On September 12, 2023, the Iowa Department of Inspections, Appeals and Licensing (DIAL), UI Appeals Bureau mailed a notice of hearing to Mr. Bower and the employer for a telephone hearing scheduled for September 25, 2023.

The undersigned administrative law judge held a telephone hearing on September 25, 2023. Mr. Bower participated in the hearing personally. The employer did not participate in the hearing. The undersigned took official notice of the administrative record.

**ISSUES:**

Did Mr. Bower appeal on time?

Did the employer discharge Mr. Bower from employment for disqualifying, job-related misconduct?

**FINDINGS OF FACT:**

Having reviewed the evidence in the record, the undersigned finds: IWD mailed the February 8, 2023 (reference 01) UI decision to Mr. Bower at his correct address. The UI decision states that it becomes final unless an appeal is postmarked or received by the IWD Appeals Section by Saturday, February 18, 2023. If the appeal deadline falls on a Saturday, Sunday, or legal holiday, the appeal period is extended to the next working day. So, the appeal deadline was extended to Monday, February 20, 2023.

Mr. Bower did not receive the decision in the mail. Mr. Bower was having issues getting his mail in February 2023 and he contacted the United States Postal Service to address the issue.

---

<sup>1</sup> Claimant is the person who applied for UI benefits. Appellant is the person or employer appealed.

In relevant part, IWD mailed Mr. Bower another UI decision. This decision, a reference 05 decision, denied Mr. Bower REGULAR (state) UI benefits because IWD concluded employer Red Rock Rubber Inc discharged him from work on July 10, 2023 for excessive unexcused absenteeism. The appeal deadline in this decision was Friday, September 8, 2023. Mr. Bower received the decision in the mail. Mr. Bower appealed online on September 9. The DIAL UI Appeals Bureau received the appeal the same day.

The undersigned further finds: Mr. Bower began working for the employer in February 2022. He worked as a full-time forklift operator. His employment ended on January 9, 2023.

Mr. Bower was working third shift on weekends. The weekend of January 7-8, the employer gave Mr. Bower 24-hour notice that the employer would switch him from third shift to first shift starting Monday, January 9. The employer scheduled Mr. Bower to work first shift on Monday, January 9. That Monday, Mr. Bower overslept, did not attend work, and did not call in. The employer policy provides that employees are to call in to their supervisor for absences or tardies. The employer terminated Mr. Bower's employment on January 9.

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

For the reasons that follow, the undersigned concludes Mr. Bower appealed the February 8, 2023 (reference 01) UI decision on time.

Iowa Code § 96.6(2) provides, in relevant part: “[u]nless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision.”

Iowa Admin. Code r. 871-24.35(1) provides:

2. Except as otherwise provided by statute or by division rule, any payment, appeal, application, request, notice, objection, petition, report or other information or document submitted to the division shall be considered received by and filed with the division:
  - (2) If transmitted via the United States Postal Service on the date it is mailed as shown by the postmark, or in the absence of a postmark the postage meter mark of the envelope in which it is received; or if not postmarked or postage meter marked or if the mark is illegible, on the date entered on the document as the date of completion.
    - (b) If transmitted via the State Identification Data Exchange System (SIDES), maintained by the United States Department of Labor, on the date it was submitted to SIDES.
    - (c) If transmitted by any means other than [United States Postal Service or the State Identification Data Exchange System (SIDES)], on the date it is received by the division.

Iowa Admin. Code r. 871-24.35(2) provides:

2. The submission of any payment, appeal, application, request, notice, objection, petition, report or other information or document not within the specified statutory or regulatory period shall be considered timely if it is established to the satisfaction of the

division that the delay in submission was due to division error or misinformation or to delay or other action of the United States postal service.

The Iowa Supreme Court has declared that there is a mandatory duty to file appeals from representatives' decisions within the time allotted by statute, and that the administrative law judge has no authority to change the decision of a representative if a timely appeal is not filed.<sup>2</sup> Compliance with appeal notice provisions is jurisdictional unless the facts of a case show that the notice was invalid.<sup>3</sup>

Mr. Bower did not receive the February 8, 2023 (reference 01) UI decision before the appeal deadline and, therefore, could not have appealed by the deadline. The notice provision of the decision was valid. Mr. Bower appealed when he received a different decision from IWD and knew that he was not eligible for UI benefits. Mr. Bower appealed the decision in this matter on time.

The undersigned further concludes the employer discharged Mr. Bower from employment for a reason that does not disqualify him from receiving UI benefits.

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 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:

...

(9) Excessive unexcused tardiness or absenteeism.

Iowa Admin. Code r. 871-24.32(4) provides:

---

<sup>2</sup> *Franklin v. IDJS*, 277 N.W.2d 877, 881 (Iowa 1979).

<sup>3</sup> *Beardslee v. IDJS*, 276 N.W.2d 373, 377 (Iowa 1979); see also *In re Appeal of Elliott* 319 N.W.2d 244, 247 (Iowa 1982).

(4) Report required. The claimant's statement and employer's statement must give detailed facts as to the specific reason for the claimant's discharge. 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. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

The employer has the burden of proof in establishing disqualifying job misconduct.<sup>4</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>5</sup> Misconduct must be "substantial" to warrant a denial of job insurance benefits.<sup>6</sup>

In an at-will employment environment an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, it incurs potential liability for unemployment insurance benefits related to that separation. 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 of the employer's policy or rule 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.

In this case, the evidence establishes that the employer ended Mr. Bower's employment for one No-Call/No-Show. No-Call/No-Shows may rise to the level of misconduct. Here, the employer did not participate in the hearing and provided no evidence of misconduct on the part of Mr. Bower. Mr. Bower is eligible for UI benefits based on how his job ended with this employer, as long as no other decision denies him UI benefits.

---

<sup>4</sup> *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982).

<sup>5</sup> *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984).

<sup>6</sup> *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984).

**DECISION:**

Mr. Bower appealed the February 8, 2023 (reference 01) UI decision on time. The February 8, 2023 (reference 01) UI decision is REVERSED. The employer discharged Mr. Bower from employment for a reason that does not disqualify him from receiving UI benefits. Mr. Bower is eligible for UI benefits, as long as no other decision denies him UI benefits.



---

Daniel Zeno  
Administrative Law Judge

September 26, 2023  
Decision Dated and Mailed

DZ/jkb

**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**

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.