

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

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**JESSE C BEVINS**  
Claimant

**THE UNIVERSITY OF IOWA**  
Employer

**APPEAL 24A-UI-03631-PT-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 03/10/24  
Claimant: Appellant (2)**

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Iowa Code § 96.5(2)a – Discharge

**STATEMENT OF THE CASE:**

The claimant, Jesse Bevins, filed an appeal from a decision of a representative dated April 3, 2024, (reference 01) that held the claimant ineligible for unemployment insurance benefits after a separation from employment. After due notice, a telephone hearing was held on April 22, 2024. The claimant participated personally. The employer, the University of Iowa, was represented by Human Resources Associate Scott Coons and participated through Senior Human Resources Director Brandi Carr and Director of Nursing Services Ali Harmon. The employer's Exhibits 1 and 2 and the claimant's Exhibit A were admitted into evidence. The administrative law judge took official notice of the administrative record.

**ISSUE:**

Did the employer discharge the claimant for disqualifying, job related misconduct?

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: The claimant began working as a full-time paramedic for the University of Iowa on April 24, 2023. The claimant was separated from employment on March 13, 2024, when he was discharged.

As a paramedic, the claimant was responsible for assessing patients, assisting providers with treatment, and transporting patients to-and-from various departments around the hospital. The employer has an employee manual that contains a code of conduct policy. The code of conduct policy requires employees to comply with all patient safety policies and to treat all patients with respect. The claimant received a copy of the employee manual as well as training on numerous policies governing patient safety for various situations.

On February 27, 2024, a nurse asked the claimant to transport a patient from the emergency department to an imaging department so that the patient could undergo an MRI. The nurse told the claimant that the patient was being examined for seizure-like activity. The claimant agreed to transport the patient. The claimant then met with the patient, explained that he was going to transport her to the imaging department, and helped the patient into a wheelchair. The claimant then wheeled the patient out of the emergency department.

Shortly after leaving the emergency department, the patient began twitching her head and hands. The claimant checked the patient's vitals and the patient did not appear to be in distress. However, when the claimant said the patient's name, the patient did not respond. Based on the claimant's experience, when individuals are unresponsive, the next step in patient care is to assess the patient's level of consciousness by administering some form of physical contact to try to elicit a response. The claimant generally used a pressure point on the neck to try to elicit responses from patients. In this instance, the claimant applied pressure to the pressure-point on the patient's neck and the patient moaned. Based on the patient's reaction, the claimant determined that the patient was conscious, so he proceeded to the imaging department.

Shortly before reaching the imaging department, the claimant said the patient's name again and the patient did not respond. The claimant checked the patient's vitals and she did not react, so the claimant said the patient's name a second time and she still did not respond. Because the patient was unresponsive, the claimant applied pressure to the pressure point on the patient's neck. After the claimant did so, the patient loudly stated, "What are you doing!?" The claimant told the patient he was going to remove her blood pressure monitor. However, as he began to undo the monitor, the patient ripped her arm away causing the monitor to fall to the ground. The claimant responded to the patient's outburst by stating, "I'm not going to tolerate this aggressive behavior."

Around that time, an MRI technician approached and asked the claimant what was going on. The patient told the MRI technician that she did not want to be alone with the claimant. The MRI technician could sense tension between the claimant and the patient, so the technician assisted the claimant in transporting the patient back to the emergency department.

After returning to the emergency department, the patient told her attending nurse that the claimant had assaulted her in the hallway by pressing a pressure point on her neck. The patient said that she was going to file a formal police report. The attending nurse reported what the patient told her to the human resources department and the employer began an investigation. During the investigation, when questioned about the incident, the claimant explained that on two occasions while transporting the patient, the patient became unresponsive. For this reason, the claimant pressed a pressure point on the patient's neck to assess her level of consciousness.

After interviewing the claimant, the employer reviewed the applicable patient care policies and procedures. The employer determined that, while pressure points can sometimes be used to assess consciousness in unresponsive individuals, the employer's seizure precaution policy does not allow for the use of painful stimulation for individuals experiencing seizure-like activity. For this reason, the employer concluded that there was no valid medical purpose for the claimant to have applied painful stimulation to the patient. On March 13, 2024, the employer called the claimant into a meeting and informed the claimant that his employment was being terminated effective immediately for using painful stimulation on a patient exhibiting seizure-like activity in violation of the employer's seizure precaution policy. Prior to his termination, the claimant had never received any warnings or discipline for similar conduct and he did not believe his job was in jeopardy.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

Iowa Code section 96.5(2)a and (d) provide:

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 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.

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

(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.

Iowa Admin. Code r. 871-24.32(8) provides:

(8) *Past acts of misconduct.* While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

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 the 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 law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Bd.*, 616 N.W.2d 661 (Iowa 2000). A failure in job performance is not misconduct unless it is intentional. *Huntoon*, supra; *Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661 (Iowa 2000). When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. 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).

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

The findings of fact show how I have resolved the disputed factual issues in this case. I assessed the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using my own common sense and experience. I found credible the claimant's testimony that he genuinely believed using a pressure-point to assess the patient's level of consciousness when she was seemingly unresponsive was an appropriate medical intervention. The reliability of the claimant's testimony is bolstered by the fact that the claimant's testimony at hearing was consistent with the explanation he provided to the employer when questioned during the investigation. For this reason, the administrative law judge concludes the claimant's actions were not motivated by malicious intent nor did he intentionally violate the employer's seizure precaution policy when he used a pressure-point to assess the patient.

In this case, the employer discharged the claimant for twice using pressure-points to assess a patient's level of consciousness after the patient did not respond to her name. While the claimant's actions may have violated the employer's seizure precaution policy, the evidence does not demonstrate that the claimant willfully or wantonly disregarded the employer's instructions or the standards of behavior the employer had a right to expect of him. Rather, the weight of the evidence suggests that the claimant's decision to apply painful stimulation to the patient was a mistake arising from a misunderstanding of the seizure precaution policy,

inadvertence, or ordinary negligence. While carelessness can result in disqualification, it must be of such degree of recurrence as to demonstrate substantial disregard for the employer's interests. The claimant's conduct in this instance does not meet that standard. As such, benefits are allowed provided the claimant is otherwise eligible.

**DECISION:**

The April 3, 2024, (reference 01) unemployment insurance decision is reversed. The claimant was discharged from employment on March 13, 2024, for no disqualifying reason. The claimant is eligible to receive unemployment insurance benefits, provided the claimant meets all other eligibility requirements.



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Patrick B. Thomas  
Administrative Law Judge

May 7, 2024  
Decision Dated and Mailed

pbt/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.