

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

**TIFFANIE JONES**

Claimant

**APPEAL 23A-UI-10450-DB-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**REM IOWA COMMUNITY SERVICES INC**

Employer

**OC: 10/01/23**

**Claimant: Appellant (2R)**

Iowa Code § 96.5(2)a – Discharge

**STATEMENT OF THE CASE:**

The claimant/appellant filed an appeal from the October 31, 2023 (reference 01) unemployment insurance decision that denied unemployment insurance benefits to the claimant based upon a separation from work. The parties were properly notified of the hearing. A telephone hearing was held on November 28, 2023. The claimant participated personally. Kameron Luten participated as a witness for the claimant. The employer was represented by Mary Kozlowski-Vought and participated through witness Kalie Moore. Claimant's Exhibit A was admitted. The administrative law judge took administrative notice of the claimant's unemployment insurance benefits records.

**ISSUE:**

Was the claimant's separation from employment disqualifying?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on December 3, 2019, as a full-time direct support professional. Her job duties included caring for individuals who could not care for themselves in a group home setting. Her last day physically worked on the job was December 26, 2022. At that time, she changed from full-time to PRN or as needed basis. Her program director, Antwon Harper, told her via text message that he would change her to PRN status. See Exhibit A. Claimant was never informed that she was required to work any specific number of hours to remain on PRN status. On or about June 7, 2023, the claimant was discharged from the employer due to her failure to work any hours since December of 2022.

Claimant changed to PRN status in order to move to Chicago to care for her mother on a full-time basis. Claimant cared for her mother full-time until September 6, 2023. The claimant has remained living in Illinois but may move back to Iowa at some time. Claimant is looking for similar work caring for individuals; however, Illinois requires full vaccination status to do so. The issue of whether the claimant has been able to work, available for work, and actively and earnestly seeking work is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes as follows:

Iowa Code section 96.5(2)a & d provide in pertinent part:

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 the 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 obligation to the employer. Misconduct by an individual includes but is not limited to all of the following: ...

The employer has the burden of proof in establishing disqualifying job-related misconduct.<sup>1</sup> In unemployment insurance benefits cases, the issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits.<sup>2</sup> What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions.<sup>3</sup>

Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits.<sup>4</sup> Such misconduct must be "substantial."<sup>5</sup> Further, a discharge for misconduct cannot be based on a past act, it must be based upon a current act.<sup>6</sup>

The credible evidence establishes that the claimant's separation from employment was not disqualifying. Claimant was never instructed or trained that she needed to work a specific number of hours to keep her PRN status. Claimant did not engage in any final acts that were substantial and which would rise to the level of job-related misconduct. Because the separation from employment is not disqualifying, benefits are allowed, provided the claimant is otherwise eligible.

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<sup>1</sup> *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982).

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

<sup>3</sup> *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988).

<sup>4</sup> *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984).

<sup>5</sup> *Id.*

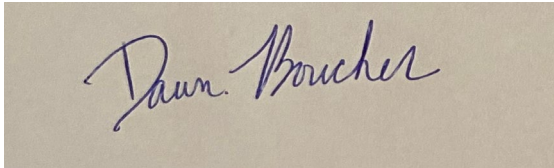
<sup>6</sup> Iowa Admin. Code r. 871-24.32(8).

**DECISION:**

The October 31, 2023 (reference 01) unemployment insurance decision is reversed. Claimant was discharged from employment for no disqualifying reason. Unemployment insurance benefits are allowed, provided the claimant remains otherwise eligible.

**REMAND:**

The matter of whether the claimant has been able to work, available for work, and actively and earnestly seeking work since her original claim date of October 1, 2023 is remanded to the Benefits Bureau for an initial investigation and determination.



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Dawn Boucher  
Administrative Law Judge

November 30, 2023  
Decision Dated and Mailed

db/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**  
**6200 Park Avenue Suite 100**  
**Des Moines, IA 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:

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