

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

DAVID R MARTIN
Claimant

CLEARY BUILDING CORP
Employer

APPEAL 24A-UI-02703-DZ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 12/31/23
Claimant: Respondent (1)**

Iowa Code § 96.5(2)a – Discharge

STATEMENT OF THE CASE:

Cleary Building Corp, the employer/appellant,¹ appealed the Iowa Workforce Development (IWD) March 4, 2024 (reference 01) unemployment insurance (UI) decision. IWD found Mr. Martin eligible for REGULAR (state) UI benefits because IWD concluded the employer dismissed him from employment on January 2, 2024 for a reason that did not disqualify him from receiving UI benefits. On March 13, 2024, the Iowa Department of Inspections, Appeals, and Licensing (DIAL), UI Appeals Bureau mailed a notice of hearing to the employer and Mr. Martin for a telephone hearing scheduled for April 2, 2024.

On March 18, 2024, Martin requested that the hearing be rescheduled due to a scheduling conflict with Mr. Martin's soon-to-be new employer. The same day, the administrative law judge granted Mr. Martin's request. On March 20, 2024, the DIAL, UI Appeals Bureau mailed a notice of hearing to the employer and Mr. Martin for a telephone hearing scheduled for April 9, 2024.

On March 29, 2024, Martin requested that the hearing be rescheduled again due to a scheduling conflict with Mr. Martin's soon-to-be new employer. The same day, the administrative law judge denied Mr. Martin's request. On April 2, 2024, Mr. Martin informed the DIAL, UI Appeals Bureau that he would not attend the hearing, and he submitted documents for the appeal.

The administrative law judge held a telephone hearing on April 9, 2024. The employer participated in the hearing through Kelly Shoppa, human resources coordinator. Mr. Martin did not attend the hearing. The administrative law judge took official notice of the administrative record and admitted Employer's Exhibit 1 and Claimant's Exhibits A-J as evidence.

ISSUES:

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

Did IWD overpay Mr. Martin UI benefits?

If so, should he repay the benefits?

¹ Appellant is the person or employer who appealed.

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: Mr. Martin began working for the employer on March 6, 2023. He worked as a full-time branch manager. His employment ended on January 2, 2024.

On Friday, December 29, 2023, an employee who reported to Mr. Martin (Employee A) resigned. Employee A sent the employer an email alleging that Mr. Martin did not train them correctly, shared information and updates about a criminal charge he was facing, complained about not having a company vehicle, and complained about his supervisors.

The employer suspended Mr. Martin the same day and opened an investigation. The employer was already dissatisfied with Mr. Martin's work performance. In May 2023, the employer told Mr. Martin that his sales were low and offered him the month of June to increase his sales.

The following Tuesday, January 2, 2024, the employer met with Mr. Martin. Mr. Martin denied the allegations from Employee A. The employer terminated Mr. Martin's employment based on Employee A's allegations and Mr. Martin not meeting the employer's work performance expectations.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the employer discharged Mr. Martin from employment on January 2, 2024 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.

The employer has the burden of proof in establishing disqualifying job misconduct.² 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.³ Misconduct must be “substantial” to warrant a denial of job insurance benefits.⁴

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.

Failure in job performance due to inability or incapacity is not considered misconduct because the actions were not volitional.⁵ Where an employer discharges an employee due to a failure in job performance, proof of the employee’s ability to do the job is required to justify disqualification, rather than accepting the employer’s subjective view. To do so is to impermissibly shift the burden of proof to the employee.⁶

In this case, Employee A alleged that Mr. Martin was a bad manager and a complainer. The employer took Employee A’s allegations over Mr. Martin’s denial and concluded that ending Mr. Martin’s employment was a good business move for the employer. The employer did what was in its best interest, but the employer has not established disqualifying, job-related misconduct on the part of Mr. Martin. Mr. Martin is eligible for UI benefits.

Since Mr. Martin is eligible for REGULAR (state) UI benefits per this decision, the issues of overpayment and repayment are moot. An issue being moot means there is nothing left to decide.⁷

² *Cosper v. Iowa Dep’t of Job Serv.*, 321 N.W.2d 6 (Iowa 1982).

³ *Infante v. Iowa Dep’t of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984).

⁴ *Newman v. Iowa Dep’t of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984).

⁵ *Huntoon v. Iowa Dep’t of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

⁶ *Kelly v. Iowa Dep’t of Job Serv.*, 386 N.W.2d 552 (Iowa Ct. App. 1986).

⁷ *Iowa Bankers Ass’n v. Iowa Credit Union Dep’t*, 335 N.W.2d 439, 442 (Iowa 1983).

DECISION:

The March 4, 2024, (reference 01) UI decision is AFFIRMED. The employer discharged Mr. Martin from employment on January 2, 2024 for a reason that does not disqualify him from receiving UI benefits. Mr. Martin is eligible for UI benefits, as long as no other decision denies him UI benefits.



Daniel Zeno
Administrative Law Judge

April 10, 2024
Decision Dated and Mailed

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APPEAL RIGHTS. If you disagree with this 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, Iowa 50321
Fax: (515)281-7191
Online: 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, Iowa 50321
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.