

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

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**BRANDY L MARTINEZ**  
Claimant

**JERRY'S DINER INC**  
Employer

**APPEAL 24A-UI-04399-DZ-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 03/24/24  
Claimant: Respondent (1)**

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Iowa Code § 96.5(2)a – Discharge

**STATEMENT OF THE CASE:**

Jerry's Diner Inc, the employer/appellant,<sup>1</sup> appealed the Iowa Workforce Development (IWD) April 22, 2024 (reference 01) unemployment insurance (UI) decision. IWD found Ms. Martinez eligible for REGULAR (state) UI benefits because IWD concluded the employer dismissed her from employment on March 28, 2024 for a reason that did not disqualify her from receiving UI benefits. On May 8, 2024, the Iowa Department of Inspections, Appeals, and Licensing (DIAL), UI Appeals Bureau mailed a notice of hearing to the employer and Ms. Martinez for a telephone hearing scheduled for May 21, 2024.

The administrative law judge held a telephone hearing on May 21, 2024. The employer participated in the hearing through Josh Diewold, president and Dawn Moeller, vice president. Ms. Martinez participated in the hearing personally. The administrative law judge admitted Department's Exhibits 1-2, and Employer's Exhibits 1-3 as evidence.

The administrative law judge concludes Ms. Martinez is eligible for UI benefits because the employer did not establish it ended her employment for disqualifying, job-related misconduct.

**ISSUES:**

Did the employer discharge Ms. Martinez from employment for disqualifying job-related misconduct?

Did IWD overpay Ms. Martinez UI benefits?

If so, should she repay the benefits?

**FINDINGS OF FACT:**

Having reviewed the evidence in the record, the administrative law judge finds: Ms. Martinez began working for the employer in December 2022. She worked as a full-time manager. Her employment ended on March 28, 2024.

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<sup>1</sup> Appellant is the person or employer who appealed.

Ms. Martinez was scheduled to work on March 28 from 6:00 a.m. – 2:00 p.m. On March 27, Ms. Martinez asked Ms. Moeller for time off on March 28 so she could attend court. Ms. Martinez asked for time off from 7:45 a.m. until she was done with court. Ms. Moeller approved Ms. Martinez's request.

On March 28, Ms. Martinez arrived at work at about 5:40 a.m. Another employee (Employee A) was already at work. Soon after Ms. Martinez arrived Employee A began yelling. Ms. Martinez went to the area where Employee A was working and saw that water had spilled. Ms. Martinez asked Employee A to calm down and mopped up the water. Employee A continued to yell. Ms. Martinez asked Employee A multiple times to stop yelling. Employee A continued to yell. Employee A went to the customer area and began loudly bad-mouthing Ms. Martinez. Ms. Martinez had complained to Ms. Moeller about Employee A several times. Each time, Ms. Moeller told Ms. Martinez that Employee A was a valuable employee, and the employer would not lose Employee A. At about 6:05 a.m., Ms. Martinez told Employee A that she was leaving, clocked out, and left.

Employee A had called Ms. Moeller at about 6:00 a.m. stating that they were arguing with Ms. Martinez. Ms. Moeller arrived at work at about 6:15 a.m. Employee A told Ms. Moeller that Ms. Martinez left without telling Employee A that she was leaving. At 6:17 a.m., Ms. Moeller called Ms. Martinez and left a voice message asking for a call back. At 6:40 a.m., Ms. Martinez responded to Ms. Moeller via text that she left work that day because she was tired of dealing with Employee A's attitude and the employer's lack of action to address it.

Just after 9:00 a.m., Ms. Martinez texted Ms. Moeller that she was still in court. Ms. Martinez finished court at about 1:45 p.m. Ms. Martinez did not return to work.

That evening just after 7:30 p.m., Ms. Moeller texted Ms. Martinez. Ms. Moeller stated that she assumed Ms. Martinez quit since she left work that morning and did not tell anyone that she was leaving. Ms. Moeller also asked Ms. Martinez to return the employer's key. Ms. Martinez responded within a few minutes that she did not quit, she let Employee A know she was leaving, and she would return the employer's key at the employer's request.

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

For the reasons that follow, the administrative law judge concludes Ms. Martinez did not quit. The employer discharged her from employment on March 28, 2024 for a reason that does not disqualify her 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.<sup>2</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>3</sup> Misconduct must be "substantial" to warrant a denial of job insurance benefits.<sup>4</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, Ms. Martinez did not express any intent to end her employment on March 28 and she took no action to do so. The employer ended Ms. Martinez's employment when Ms. Moeller texted Ms. Martinez and asked for the employer's key. The employer did what was in its best interest, but the employer has not established that it ended Ms. Martinez's employment for disqualifying, job-related misconduct. Ms. Martinez is eligible for UI benefits.

Since Ms. Martinez 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.<sup>5</sup>

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

<sup>3</sup> *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984).

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

<sup>5</sup> *Iowa Bankers Ass'n v. Iowa Credit Union Dep't*, 335 N.W.2d 439, 442 (Iowa 1983).

**DECISION:**

The April 22, 2024 (reference 01) UI decision is AFFIRMED. The employer discharged Ms. Martinez from employment on March 28, 2024 for a reason that does not disqualify her from receiving UI benefits. Ms. Martinez is eligible for UI benefits, as long as no other decision denies her UI benefits.



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Daniel Zeno  
Administrative Law Judge

May 23, 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:

**Iowa 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:

**Iowa 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.