

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

DARWIN L JOHNSON
Claimant

KRAFT HEINZ FOODS COMPANY LLC
Employer

APPEAL 23A-UI-11477-DB-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 11/19/23
Claimant: Appellant (2)**

Iowa Code § 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the December 7, 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 December 29, 2023. The claimant participated personally. The employer participated through witness Rachel Wentzloff. The administrative law judge took administrative notice of the claimant's unemployment insurance benefits records. The employer submitted an untimely request to postpone the hearing. The claimant objected. The administrative law judge denied the request to postpone as there was no good cause reason established for why the request was untimely.

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 this employer on January 3, 2023, as a full-time sanitation worker. His last day physically worked on the job was November 14, 2023, and his date of separation from employment was November 21, 2023. He was discharged for an incident that occurred on November 14, 2023.

On November 14, 2023, the claimant left the facility during his regularly scheduled break to conduct personal business. Claimant forgot to clock out when he left the facility. Claimant got a flat tire during break and contacted his supervisor to inform him that he needed to be clocked out because he had forgotten to. The supervisor told him that he would clock him out and that it "was not a problem". Claimant was then put on suspension pending an investigation into the matter.

The employer has a written policy that requires employees to clock out if they are going to leave the facility for a break period. Employees are not required to clock out if they stay in the facility during their break period. Whether an employee is discharged or receives a lesser discipline for

violation of this rule is at the discretion of the employer. Prior to his discharge, claimant had received one verbal warning for failure to properly clean a machine.

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.¹ 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.² What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions.³

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

In this case, the claimant clearly notified his supervisor that he forgot to clock out. There is no evidence that the claimant engaged in a deliberate act or omission that constituted a material breach of the duties and obligations of his contract of employment. The credible evidence establishes that the claimant's separation from employment was not disqualifying. Because the separation from employment is not disqualifying, benefits are allowed, provided the claimant is otherwise eligible.

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

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

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

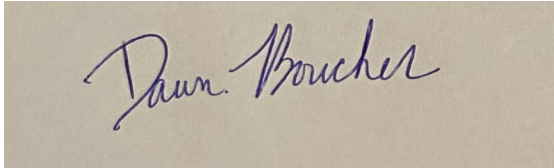
⁴ *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984).

⁵ *Id.*

⁶ Iowa Admin. Code r. 871-24.32(8).

DECISION:

The December 7, 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.

A rectangular area containing a handwritten signature in blue ink that reads "Dawn Boucher". The signature is written in a cursive style.

Dawn Boucher
Administrative Law Judge

January 4, 2024
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

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

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.