

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

EILEEN N CANAFAX
Claimant

APPEAL 23A-UI-11162-S2-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

IOWA STATE UNIVERSITY
Employer

**OC: 10/29/23
Claimant: Respondent (1)**

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

STATEMENT OF THE CASE:

The employer filed an appeal from the November 21, 2023, (reference 01) unemployment insurance decision that allowed benefits based upon a finding that claimant was discharged with no evidence of misconduct. The parties were properly notified about the hearing. A telephone hearing was held on December 19, 2023. Claimant Eileen Canafax participated and testified. Employer Iowa State University participated through employee and labor relations specialist Maggie Carbaugh and legal counsel Payton Clerc. Claimant's Exhibits A – F were received. Employer's Exhibits 1 – 4 were received. The administrative law judge took official notice of the administrative record.

ISSUES:

Was the claimant discharged for disqualifying job-related misconduct?
Has the claimant been overpaid unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a programs manager from July 1, 2022, and was separated from employment on October 27, 2023, when she was discharged.

Employer maintains a policy relating to time reporting. The policy provides that non-exempt employees under the Fair Labor Standards Act (FLSA) are paid overtime pay or earn compensatory time off at a rate of time and a half for time worked over 40 hours. (Exhibit 4). It also prohibits managers from knowingly or intentionally approving false time records or altering time records to avoid actual hours worked. It also maintains a Code of Business and Fiduciary Conduct and a Statement of Ethics which require employees to comply with applicable laws and policies. Claimant had access to these policies in employer's policy library.

Claimant was responsible for approving the timesheets of the employees she supervised. She did not receive training on how to approve timesheets, but she was aware of a student employee policy which stated it was the responsibility of the employee and their manager to review and submit timesheets that reflect the hours worked. (Exhibit E). The policy also provides a link to the ServiceNow guide which states time worked should not be corrected to avoid overtime if actual hours worked were more than regularly scheduled. Claimant was not aware of this second rule. She received guidance from human resources on how she approved timesheets and believed she was in compliance with those instructions.

Employees were expected to work their scheduled hours. If an employee worked additional hours outside of their normal hours, they were expected to communicate with claimant so that she would approve their timesheet when she noted hours worked outside of their scheduled shift. When claimant began her employment, there were issues with employees clocking in prior to being ready to start work, as well as with clocking out after they left the building. If an employee did not notify claimant they had worked additional hours or outside of their regular hours, claimant would ask the employee to modify their timesheet to reflect their scheduled shifts.

In September 2023, employer received a complaint from one of claimant's reports that claimant had been editing her timesheet to incorrectly reflect her hours worked. On October 3, 2023, employer question claimant about her timesheet approvals and edits to timesheets. On October 4, 2023, employer sent a warning letter to claimant notifying her that her action of editing nonexempt employees' timesheets violated the FLSA and ordered her to stop doing so. The letter stated that failure to comply with the instructions in the letter would result in disciplinary action. The letter also provided training it expected claimant to complete and resources to assist her going forward. Claimant completed the training and did not incorrectly edit any timesheets after receiving the letter. Claimant did edit a timesheet on October 19, 2023.

On October 27, 2023, employer discharged claimant for violating several policies, specifically its Non-Exempt Time Reporting Policy, the FLSA, Code of Ethics, and the Code of Business and Fiduciary Conduct. (Exhibit 2). Claimant's actions placed employer at liability for fines due to the failure to accurately report and pay for time worked by non-exempt employees.

The administrative record reflects that claimant has received unemployment benefits in the amount of \$2,416.00, since filing a claim with an effective date of October 29, 2023, for four weeks between November 12, 2023, and December 16, 2023. Employer participated in the fact-finding interview through the submission of written documents.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged for no disqualifying reason. Benefits are allowed.

Iowa Code section 96.5(2)a provides:

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.

Iowa Admin. Code r. 871-24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being 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. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

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). The issue is not whether the employer made a correct decision in separating 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).

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 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.

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

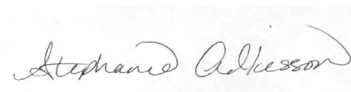
misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

Inasmuch as employer had warned claimant about improperly editing timesheets three weeks prior to the separation and there were no incidents of alleged misconduct thereafter, it has not met the burden of proof to establish that claimant acted deliberately or negligently after the most recent warning. The evidence shows claimant edited a timesheet after the warning, but the evidence does not show that the edit was a violation of the policy, as not all edits are violations. As such, there is no final act of job-related misconduct sufficient to disqualify the claimant from receipt of unemployment insurance benefits. See Iowa Code § 96.5(2)a. Benefits are allowed, provided the claimant remains otherwise eligible.

Because claimant is eligible for benefits, the issues of overpayment of regular unemployment insurance benefits and relief of charges are moot.

DECISION:

The November 21, 2023, (reference 01) unemployment insurance decision is affirmed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed. The issues of overpayment, repayment and chargeability are moot.



Stephanie Adkisson
Administrative Law Judge

December 28, 2023
Decision Dated and Mailed

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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**

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 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.