

**IOWA DEPARTMENT OF INSPECTIONS AND APPEALS
ADMINISTRATIVE HEARINGS DIVISION, UI APPEALS BUREAU**

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**APPEAL 22A-UI-17603-LJ-T
ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA DEPARTMENT OF INSPECTIONS AND APPEALS
ADMINISTRATIVE HEARINGS DIVISION, UI APPEALS BUREAU**

CHARLES D COSGROVE

Claimant

PER MAR SECURITY & RESEARCH CORP

Employer

APPEAL 22A-UI-17603-LJ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 09/04/22

Claimant: Respondent (1)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quit from Employment
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Admin. Code r. 871-23.10 – Employer Participation in Fact-Finding Interview

STATEMENT OF THE CASE:

On September 30, 2022, employer Per Mar Security & Research Corporation filed an appeal from the September 22, 2022 (reference 01) unemployment insurance decision that allowed benefits based on a determination that claimant was discharged on September 2, 2022, for no disqualifying reason. The parties were properly notified of the hearing. A telephonic hearing was held at 2:00 p.m. on Wednesday, October 26, 2022. The claimant, Charles D. Cosgrove, did not appear and did not participate in the hearing. The employer, Per Mar Security & Research Corporation, participated through Lacy Fry-Henry, HR Generalist; Matt Milburn, Operations Manager; and Isabella Kogut, Valeu NSN Hearing Representative and witness regarding the fact-finding interview. The administrative law judge took official notice of the administrative record.

ISSUE:

Did the claimant quit the employment without good cause attributable to the employer or was he discharged for reasons related to job misconduct sufficient to warrant a denial of unemployment benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time with the employer, most recently as a security officer, from July 2, 2019, until September 3, 2022, when he was discharged from employment.

Most recently, claimant had been assigned to work at the Henry County Health Center (“HCHC”) in Mount Pleasant, Iowa. On September 2, Milburn and Justin (his coworker in the Cedar Rapids branch office) received a message from HCHC that they wanted claimant removed from the site. Justin attempted to reach claimant via telephone multiple times prior to his shift but was not successful, and claimant did not have voicemail available on his phone. Therefore, Justin sent him an email to let him know not to report to work. Claimant reported to

work that evening anyway and trouble ensued, causing staff at HCHC to have claimant escorted off the property. Additionally, HCHC staff instructed claimant never to return.

On September 5, claimant contacted the Cedar Rapids branch office via telephone and asked to speak to the “general manager.” Milburn and Justin directed claimant to the corporate office. Claimant contacted that office and spoke with HR Director John Mumma and Tim Kilfow, another person in leadership. Neither Milburn nor Fry-Henry knows the substance of this conversation. However, after this conversation, Mumma contacted Milburn and instructed him to inactivate claimant’s employment in the employer’s system because claimant “issued a demand.” Claimant’s employment was not in jeopardy at the time, and Milburn had other assignments available for him after the HCHC assignment did not work out.

The administrative record reflects that claimant has filed no weekly continued claims and received no unemployment benefits since filing a claim with an effective date of September 4, 2022. The administrative record also establishes that the employer did not participate in the fact-finding interview through no fault of their own. Kogut received the fact-finder’s telephone call as she was preparing to call in for a different unemployment insurance hearing matter. She had no advance notice of this fact-finding, and she was not prepared to participate or hand the matter off to another staff-member. Kogut then received the notice for the fact-finding in the mail the following day, as it had been sent to the incorrect address initially.

REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code §96.5(1) provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

Iowa unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code §§ 96.5(1) and 96.5(2)a. The burden of proof rests with the employer to show that the claimant voluntarily left the employment. *Irving v. Empl. App. Bd.*, 15-0104, 2016 WL 3125854, (Iowa June 3, 2016). A voluntary quitting of employment requires that an employee exercise a voluntary choice between remaining employed or terminating the employment relationship. *Wills v. Empt Appeal Bd.*, 447 N.W.2d 137, 138 (Iowa 1989); *Peck v. Empt Appeal Bd.*, 492 N.W.2d 438, 440 (Iowa Ct. App. 1992). It requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980).

Where there is no expressed intention or act to sever the relationship, the case must be analyzed as a discharge from employment. *Peck v. Empt Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992). Here, the employer has offered no evidence that the claimant quit his employment. Therefore, this case must be analyzed as a discharge, and the employer bears the burden of establishing disqualifying misconduct.

Iowa Code § 96.5(2)a provides:

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.

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.

This definition of misconduct has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Reigelsberger v. Emp't Appeal Bd.*, 500 N.W.2d 64, 66 (Iowa 1993); *accord Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661, 665 (Iowa 2000). 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).

Iowa Admin. Code r. 871-24.32(4) provides:

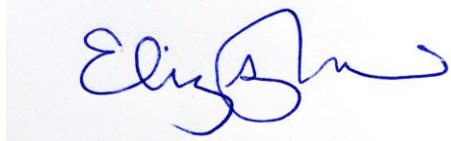
(4) Report required. The claimant's statement and the employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established.

In an at-will employment environment an employer may discharge an employee for any number of reasons or no reason at all, provided the discharge is not contrary to public policy. However, if the employer 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. Here, the employer did not provide sufficient evidence to support a finding that claimant was discharged for disqualifying misconduct. Witnesses testified that claimant was separated after issuing a "demand," but there is no indication as to what the substance of claimant's demand was or how that demand impacted the employer. Without evidence of claimant's conduct, the employer cannot sustain its burden of proof. Benefits must be allowed.

As benefits are allowed, the issues of overpayment and chargeability are moot.

DECISION:

The September 22, 2022 (reference 01) unemployment insurance decision is affirmed. Claimant did not quit but was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible. The issues of overpayment and chargeability are moot.



Elizabeth A. Johnson
Administrative Law Judge

November 3, 2022
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:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
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
4th Floor – Lucas Building
Des Moines, Iowa 50319
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.