

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

ANGELA R DAVIS
Claimant

ENERGY MFG CO INC
Employer

APPEAL 24A-UI-03797-PT-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

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

Iowa Code § 96.5(2)a – Discharge
Iowa Code § 96.3(7) – Overpayment of Benefits
Iowa Admin. Code r. 871-24.10 – Employer Participation in Fact-finding Interview

STATEMENT OF THE CASE:

The employer, Energy MFG. Co. Inc., filed an appeal from a decision of a representative dated April 9, 2024, (reference 01) that held the claimant eligible for unemployment insurance benefits after a separation from employment. After due notice, a telephone hearing was held on May 1, 2024. The claimant, Angela Davis, participated personally. The employer participated through Human Resources Manager Bryan Latusick. The administrative law judge took official notice of the administrative record.

ISSUES:

Did the employer discharge the claimant for job related misconduct?
Was the claimant overpaid benefits?
Should the claimant repay benefits or should the employer be charged based upon participation in fact-finding?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: The claimant began working as a full-time quality technician for Energy MFG. Co. Inc. on August 22, 2022. The claimant was separated from employment on March 15, 2024, when she was discharged.

As a quality technician, the claimant was responsible for examining and measuring incoming and outgoing products to ensure the products were properly calibrated and met the employer's quality standards. The claimant worked from 7:30 a.m. to 4:00 p.m. Monday through Friday. The employer has a collective bargaining agreement with a union, which contains a code of conduct policy. The code of conduct policy prohibits employees from supplying false information on company documents and warns employees that violation of the policy could result in discipline up to and including termination of employment. The claimant received a copy of the collective bargaining agreement and was familiar with the employer's work rules and policies.

In March 2024, the claimant's significant other, who also worked for the employer, filed a grievance against the employer with the union. A meeting to discuss the employee's grievance was scheduled for March 14, 2024. On the morning of March 14, the employee gave the claimant a one page handwritten note that he wanted to submit as a document for his grievance hearing. The employee asked the claimant if she could type the note for him because he has bad handwriting. The note was difficult to read, but the claimant agreed to type it. The employee asked the claimant to give the document to his union representative when she finished.

The claimant knew typing the note for her significant other was not work-related, so the claimant adjusted her schedule to work through her lunch break so that she could make-up the time she spent transcribing the note. The claimant then began typing the note. While she was typing, the plant manager walked over to the claimant's work station and saw that she was typing the note. The plant manager walked away without saying anything to the claimant. Once the claimant finished typing the document, she signed the document for her significant other because he was working and was not available to sign the document. The claimant then delivered the document to the union representative.

After delivering the document to the union representative, the claimant went to her supervisor and told him that she had transcribed a document for her significant other to use in his grievance hearing. She also mentioned that the plant manager saw her typing the document. The claimant's supervisor responded, "Don't do that again, that's probably a bad idea." The claimant then returned to work.

During the grievance meeting, the management representative noticed that the signature on the typed document did not match the employee's other signatures. The employee told them that was because the claimant had signed the document for him. Later that day, the employer called the claimant into a meeting and asked the claimant whether she had typed and signed the document for her significant other. The claimant confirmed that she had. The employer then informed the claimant that her employment was being terminated effective immediately for forging a signature on a company document in violation of the employer's code of conduct policy. Prior to her termination, the claimant had never received any warnings or workplace discipline and she did not believe that her job was in jeopardy.

The claimant's administrative records indicate that the claimant filed her original claim for benefits with an effective date of March 24, 2024. Since filing her initial claim, the claimant has filed weekly claims for benefits for the six-weeks between March 24 and May 4, 2024. The claimant has received total unemployment insurance benefits of \$3,756.00. The employer did not participate in the fact-finding interview because it did not receive notice until after the interview had already taken place.

REASONING AND CONCLUSIONS OF LAW:

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

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.

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

(4) *Report required.* The claimant's statement and 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 cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

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.

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). 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. 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).

Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Bd.*, 616 N.W.2d 661 (Iowa 2000). A failure in job performance is not misconduct unless it is intentional. *Huntoon*, supra; *Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661 (Iowa 2000).

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

The findings of fact show how I have resolved the disputed factual issues in this case. I assessed the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using my own common sense and experience. I find the claimant's testimony that, while trying to help her significant other, she mistakenly assumed everyone would know that she was the one who typed and signed the document to be credible. The administrative law judge concludes the claimant did not intend to deceive anyone with the signature on the document nor did she intentionally violate the employer's work rules.

In this case, the employer discharged the claimant for transcribing and signing a document for her significant other that was used in his grievance meeting. While the claimant's actions may have violated the employer's policy, the evidence does not demonstrate that the claimant willfully or wantonly disregarded the employer's instructions or the standards of behavior the employer had a right to expect of her. Rather, the weight of the evidence suggests that the claimant's decision to type the document arose from a genuine desire to help another employee and her decision to sign the document was an isolated instance of poor judgment arising from mere inadvertence or ordinary negligence. While carelessness can result in disqualification, it must be of such degree of recurrence as to demonstrate substantial disregard for the employer's interests. The claimant's conduct in this instance does not meet that standard. As such, benefits are allowed provided the claimant is otherwise eligible.

Because the claimant's separation was not disqualifying, the issues of overpayment, repayment and chargeability are moot.

DECISION:

The April 9, 2024, (reference 01) unemployment insurance decision is affirmed. The claimant was discharged from employment on March 15, 2024, for no disqualifying reason. The claimant is eligible to receive unemployment insurance benefits, provided the claimant meets all other eligibility requirements. The issues of overpayment, repayment and chargeability are moot.



Patrick B. Thomas
Administrative Law Judge

May 10, 2024
Decision Dated and Mailed

PBT/jkb

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.