

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

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**DARONN S BASS**  
Claimant

**APPEAL 23R-UI-10287-PT-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HY-VEE INC**  
Employer

**OC: 08/06/23  
Claimant: Appellant (1)**

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Iowa Code § 96.5(2)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the September 1, 2023, (reference 02) that held claimant ineligible for unemployment insurance benefits after a separation from employment. The parties were properly notified about the hearing to be held on September 22, 2023. The claimant failed to appear for the hearing. After a default decision was issued due to the claimant's failure to appear and participate, the claimant appealed to the Employment Appeal Board (EAB). On October 31, 2023, the EAB remanded this matter for a new hearing

The parties were notified of a new hearing to be held on November 21, 2023. However, the hearing notice was defective, as it did not include the correct issue on appeal. Therefore, the hearing was rescheduled. After due notice, a hearing was held on December 12, 2023. Claimant participated personally. The employer participated through Assistant Manager of Store Operations Hailee Dill and was represented by Corporate Cost Control Representative Kelly Ray. Employer's Exhibit 1 was admitted into evidence. The administrative law judge took official notice of the administrative record.

**ISSUE:**

Whether the claimant was discharged for disqualifying, job-related misconduct?

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant was employed as a part-time checker from September 25, 2022 until his employment with Hy-Vee Inc. ended on August 6, 2023.

The employer has an employee handbook that contains a drug and alcohol policy. The drug and alcohol policy strictly prohibits the use or possession of drugs "for which the use or possession is regulated or prohibited by federal, state or local law." The policy expressly states that the prohibition on illegal drug use applies "regardless of whether the individual is actually at work or on company premises when engaged in illegal activity." The policy informs employees that violations can result in discipline up to and including termination of employment. Claimant received a copy of the employee handbook and was aware of the employer's work rules and policies.

On March 7, 2023, the employer learned from an article in the local newspaper that claimant had been arrested the previous evening. According to the article, claimant had been charged with driving while barred, possession of a controlled substance, operating while under the influence, eluding arrest, and interference with official acts. Claimant was incarcerated for approximately 36-hours, but did not miss any work due to his incarceration.

Claimant was next scheduled to work on March 11, 2023. When claimant arrived for his shift, the store manager met with claimant and asked him about the criminal charges. Claimant confirmed that he had been arrested on March 6, 2023, and that he had been charged with several aggravated and serious misdemeanors. The employer suspended the claimant pending the outcome of the criminal prosecution.

On August 1, 2023, the claimant pleaded guilty to possession of a controlled substance, operating while under the influence, and eluding. The employer learned of claimant's convictions on August 6, 2023, and formally discharged the claimant from the employment at that time. There was no other basis for the suspension and discharge. The store manager tied calling claimant several times to inform claimant of the termination. However, claimant did not answer his phone or return the store manager's calls. The employer has had no further contact with claimant.

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

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct. Benefits are denied.

The administrative law judge notes as an initial matter that this case is one of termination, rather than a quit due to incarceration under Iowa Code § 96.5(11). Iowa Code § 96.5(11) only applies when the claimant's incarceration is the factor causing the claimant's separation. In this case, the employer terminated the claimant despite the fact that he did not miss any work due to incarceration. As a result, the administrative law judge analyzes this case as one of termination.

Iowa Code section 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. 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).

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.

The employer has the burden of proof in establishing disqualifying job-related misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See *Lee v. Employment Appeal Board*, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See *Gimbel v. Employment Appeal Board*, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

While past acts and warnings can be used to determine the magnitude of the current act of misconduct, a discharge for misconduct cannot be based on such past act(s). The termination of employment must be based on a current act. See Iowa Admin. Code r. 871-24.32(8). In determining whether the conduct that prompted the discharge constituted a "current act," the administrative law judge considers the date on which the conduct came to the attention of the employer and the date on which the employer notified the claimant that the conduct subjected the claimant to possible discharge. See also *Greene v. EAB*, 426 N.W.2d 659, 662 (Iowa App. 1988).

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. See Iowa Admin. Code r. 871-24.32(4).

Violation of a specific work rule, even off-duty, can constitute misconduct in connection with the employment. In *Kleidosty v. EAB*, 482 N.W.2d 416, 418 (Iowa 1992), the employer had a specific rule prohibiting immoral and illegal conduct. The worker was convicted of selling cocaine off the employer's premises. The Court found misconduct in connection with the employment. In its analysis, the Court stressed the importance of a specific policy, even one which was stated only in terms of illegal or immoral conduct.

The evidence in the record establishes a discharge for misconduct in connection with the employment. The employer's drug and alcohol policy specifically prohibits the possession and use of illegal drugs either at work or otherwise. The work rules put claimant on notice that his off-duty conduct, especially criminal conduct, could subject him to discipline and possible discharge from the employment. On August 1, 2023, claimant pleaded guilty to possession of a controlled substance along with two other criminal offenses that occurred on March 5, 2023. Because the employer's policy placed claimant on notice that the off-duty conduct could subject him to discipline and possible discharge, the off-duty conduct constituted misconduct in connection with the employment. Claimant's actions were a deliberate violation of company policy and of the standards of behavior the employer had a right to expect of claimant. As such, claimant was discharged for a current act of disqualifying, job-related misconduct. Benefits are denied.

**DECISION:**

The September 1, 2023, (reference 02) unemployment insurance decision is affirmed. The claimant was discharged from employment due to disqualifying, job-related misconduct. Unemployment insurance benefits are withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.



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Patrick B. Thomas  
Administrative Law Judge

December 15, 2023  
Decision Dated and Mailed

pbt/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:

**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.