

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

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**SHAWN C MOONEY**  
Claimant

**WAYPOINT SERVICES FOR WOMEN, CHIL**  
Employer

**APPEAL 23A-UI-06894-DZ-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 05/28/23  
Claimant: Appellant (2)**

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Iowa Code § 96.5(2)a – Discharge

**STATEMENT OF THE CASE:**

Shawn C. Mooney, the claimant/appellant,<sup>1</sup> filed an appeal from the Iowa Workforce Development (IWD) July 6, 2023 (reference 04) unemployment insurance (UI) decision. The decision denied Ms. Mooney REGULAR (state) UI benefits because IWD concluded that the employer discharged her from work on June 1, 2023 for not following instructions. On July 13, 2023, the Iowa Department of Inspections, Appeals, and Licensing, UI Appeals Bureau mailed a notice of hearing to Ms. Mooney and the employer for a telephone hearing scheduled for July 31, 2023.

The undersigned administrative law judge held a telephone hearing on July 31, 2023. Ms. Mooney participated personally. Marlon Mormann, attorney, represented Ms. Mooney. The employer participated through Sharon Wilkinson, managing director of human resources, and J'Nae Peterman, director of housing services. The undersigned admitted Employer's Exhibits 1-2 as evidence.

**ISSUE:**

Did the employer discharge Ms. Mooney from employment for disqualifying, job-related misconduct?

**FINDINGS OF FACT:**

Having reviewed the evidence in the record, the administrative law judge finds: Ms. Mooney began working for the employer in February 2022. She worked as a full-time housing specialist. Her employment ended on June 1, 2023.

The employer requires housing specialists to have at least two case management meetings with each assigned client and input notes from each meeting into the employer's system. These requirements are in the employer's program manual. Ms. Mooney received a copy of the policy on, or about, her hire date.

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<sup>1</sup> Claimant is the person who filed the UI claim with IWD. Appellant is the person or employer who filed the appeal.

On March 1, 2023, the employer gave Ms. Mooney a verbal warning for not thoroughly completing client forms.<sup>2</sup> On April 26, the employer gave Ms. Mooney a written warning for not attempting to contact clients at least two times per month and for not documenting the contacts she made.<sup>3</sup> That same day, the employer also gave Ms. Mooney a final written warning for not making the necessary contacts with clients and documenting said contacts.<sup>4</sup> The employer also gave Ms. Mooney a second final warning this same day because she did not attend work on April 20, she had not requested time off and she had not notified the employer that she would not be attending work that day.<sup>5</sup>

On May 25, another employee alerted the employer that Ms. Mooney had not entered notes for some of her assigned clients. The employer reviewed Ms. Mooney's cases and saw that Ms. Mooney had entered zero notes for about fifty percent of her assigned clients for the month of May. The employer terminated Ms. Mooney's employment one week later for continuously not meeting the employer's work performance expectations. Ms. Mooney did the job to the best of her ability.

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

For the reasons that follow, the undersigned concludes the employer discharged Ms. Mooney from employment for a reason that does not disqualify her from receiving UI benefits.

Iowa Code section 96.5(2)(a) and (d) provide, in relevant part:

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.

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 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.

The employer has the burden of proof in establishing disqualifying job misconduct.<sup>6</sup> The issue is not whether the employer made a correct decision in separating the claimant from

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<sup>2</sup> Employer's Exhibit 2, page 33 of the pdf.

<sup>3</sup> *Id.* at 31.

<sup>4</sup> *Id.* at 24.

<sup>5</sup> *Id.* at 21.

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

employment, but whether the claimant is entitled to unemployment insurance benefits.<sup>7</sup> Misconduct must be “substantial” to warrant a denial of job insurance benefits.<sup>8</sup>

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 of the employer’s policy or rule 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.

Failure in job performance due to inability or incapacity is not considered misconduct because the actions were not volitional.<sup>9</sup> Where an employer discharges an employee due to a failure in job performance, proof of the employee’s ability to do the job is required to justify disqualification, rather than accepting the employer’s subjective view. To do so is to impermissibly shift the burden of proof to the employee.<sup>10</sup>

In this case, Ms. Mooney attempted to perform the job to the best of her ability, but she was unable to meet the employer’s work performance expectations. It is understandable that the employer would end Ms. Mooney’s employment since she could not do the job to the employer’s satisfaction, even after the employer warned. In the end, the employer has not established intentional misconduct on the part of Ms. Mooney, as is the employer’s burden of proof. Ms. Mooney is eligible for UI benefits based on how her job ended with this employer.

**DECISION:**

The July 6, 2023 (reference 04) UI decision is REVERSED. The employer discharged Ms. Mooney from employment for a reason that does not disqualify her from receiving UI benefits. Ms. Mooney is eligible for UI benefits, as long as no other decision denies her UI benefits. Any benefits claimed and withheld on this basis must be paid.



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Daniel Zeno  
Administrative Law Judge

August 14, 2023  
Decision Dated and Mailed

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<sup>7</sup> *Infante v. Iowa Dep’t of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984).

<sup>8</sup> *Newman v. Iowa Dep’t of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984).

<sup>9</sup> *Huntoon v. Iowa Dep’t of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

<sup>10</sup> *Kelly v. Iowa Dep’t of Job Serv.*, 386 N.W.2d 552 (Iowa Ct. App. 1986).

**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  
4<sup>th</sup> 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 adquiera 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.