

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

TIMOTHY O'NEILL
Claimant

NESPER SIGN ADVERTISING INC
Employer

APPEAL 24A-UI-06421-DZ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 06/16/24
Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

Timothy O'Neill, the claimant/appellant,¹ appealed the Iowa Workforce Development (IWD) July 9, 2024 (reference 01) unemployment insurance (UI) decision. IWD denied Mr. O'Neill REGULAR (state) UI benefits because IWD concluded the employer discharged him from employment on June 13, 2024 for insubordination. On July 16, 2024, the Iowa Department of Inspections, Appeals, and Licensing (DIAL), UI Appeals Bureau mailed a notice of hearing to Mr. O'Neill and the employer for a telephone hearing scheduled for July 30, 2024.

The administrative law judge held a telephone hearing on July 30, 2024. Mr. O'Neill participated in the hearing personally. The employer participated in the hearing through Phil Garland, co-owner/president, and Donna Garland, co-owner/vice-president. The administrative law judge admitted Department's Exhibit 1, Claimant's Exhibits A-B, and Employer's Exhibits 1-2 as evidence. The administrative law judge did not admit Employer' Exhibit 3 because it is a duplicate of Department's Exhibit 1.

The administrative law judge concludes Mr. O'Neill is not eligible for UI benefits based on how his job ended with this employer.

ISSUE:

Did the employer discharge Mr. O'Neill from employment for disqualifying, job-related misconduct?

FINDINGS OF FACT:

The decision in this case rests, in part, on the credibility of the witnesses. It is the duty of the administrative law judge as the trier of fact, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue.² The administrative law judge may believe all, part or none of any witness's testimony.³ In assessing the credibility of witnesses, the administrative

¹ Claimant is the person who applied for UI benefits. Appellant is the person or employer who appealed.

² *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007).

³ *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996).

law judge should consider the evidence using his or her own observations, common sense and experience.⁴ In determining the facts, and deciding what testimony to believe, the administrative law judge 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 conduct, age, intelligence, memory and knowledge of the facts; the witness's interest in the trial, and the witness's motive, candor, bias and prejudice.⁵ The following findings of fact show how the administrative law judge has resolved the disputed factual issues in this case. The administrative law judge assessed the credibility of the witnesses, considered the applicable factors listed above, and used his own common sense and experience.

Having reviewed the evidence in the record, the administrative law judge finds: Mr. O'Neill began working for the employer on January 15, 2024. He worked as a full-time outside salesperson. His employment ended on June 13, 2024.

Mr. O'Neill has many years of experience as a salesperson. In about March, Mr. Garland noticed that Mr. O'Neill's sales performance was poor. Mr. O'Neill made two sales in April, two in May, and one in June. Mr. Garland concluded that the economy explained some of Mr. O'Neill's poor sales performance, but not all of it.

Mr. Garland met with Mr. O'Neill individually after a weekly team meeting. At their May 29 team meeting, Mr. Garland directed all sales staff to complete a tracking spreadsheet and turn in a copy of the sheet to him at their June 5 team meeting. Mr. O'Neill felt that Mr. Garland was micromanaging him and the spreadsheet was for Mr. Garland's benefit and not his. Mr. O'Neill did not complete the spreadsheet before the June 5 meeting.

On June 10, Mr. O'Neill was talking with another employee (Employee A) about a permit. Employee A asked Mr. O'Neill if Mr. O'Neill had checked on the permit. Mr. O'Neill responded that he and Mr. Garland were in a pissing match and Mr. O'Neill was not doing sales to prove a point. Employee A reported Mr. O'Neill's comments to Mr. Garland.

On June 12, Mr. Garland met with Mr. O'Neill for their weekly meeting. Mr. O'Neill admitted to making the statement to Employee A and stated that he shouldn't have made the statement. Mr. O'Neill told Mr. Garland that he felt Mr. Garland was micromanaging him, to which Mr. Garland responded that he was managing Mr. O'Neill given his poor sales record. Mr. Garland told Mr. O'Neill that things may not work out with his employment if Mr. O'Neill continued the path he was on. Mr. O'Neill left the meeting, went to another work meeting, then went to two bars during work time. Mr. Garland knew Mr. O'Neill was at the two bars through location tracking on the employer's phone. The next day Mr. Garland terminated Mr. O'Neill's employment and told Mr. O'Neill that he was not a good fit for the employer.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the employer discharged Mr. O'Neill from employment on June 13, 2024 for disqualifying, job-related misconduct.

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

An individual shall be disqualified for benefits:

⁴ *Id.*

⁵ *Id.*

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.⁶ The issue is not whether the employer made a correct decision in separating the claimant from employment, but whether the claimant is entitled to unemployment insurance benefits.⁷ Misconduct must be "substantial" to warrant a denial of job insurance benefits.⁸

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 the employer fails to meet its burden of proof to establish job related misconduct as the reason for the separation, the employer incurs potential liability for UI benefits related to that separation. A decision about 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.

Continued failure to follow reasonable instructions constitutes misconduct.⁹ But, an employee's failure to perform a specific task may not constitute misconduct if such failure is in good faith.¹⁰ The administrative law judge must analyze situations involving alleged insubordination by evaluating the reasonableness of the employer's request in light of the circumstances, along with the employee's reason for non-compliance.¹¹ Good faith under this standard is not determined by the claimant's subjective understanding. Good faith is measured by an objective standard of reasonableness. Otherwise, benefits might be paid to someone whose "behavior is in fact grounded upon some sincere but irrational belief and where the behavior may be properly deemed misconduct."¹² "The key question is what a reasonable person would have believed under the circumstances."¹³

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

⁷ *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984).

⁸ *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984).

⁹ See *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990).

¹⁰ See *Woods v. Iowa Department of Job Service*, 327 N.W.2d 768, 771 (Iowa 1982).

¹¹ See *Endicott v. Iowa Department of Job Service*, 367 N.W.2d 300 (Iowa Ct. App. 1985).

¹² *Aalbers v. Iowa Department of Job Service*, 431 N.W.2d 330, 337 (Iowa 1988).

¹³ *Aalbers v. Iowa Department of Job Service*, 431 N.W.2d 330, 337 (Iowa 1988); accord *O'Brien v. EAB*, 494 N.W.2d 660 (Iowa 1993)(objective good faith is test in quits for good cause).

In this case, the employer tried to help Mr. O'Neill address his poor sales. As part of that effort, Mr. Garland directed Mr. O'Neill to complete a tracking spreadsheet so the employer could understand what he was doing. Mr. O'Neill did not follow this instruction because he felt that Mr. Garland was unnecessarily micromanaging him. Mr. O'Neill went even further and told Employee A that he was intentionally not his job to prove a point to the employer. Mr. O'Neill's refusal to complete the tracking spreadsheet is not justified by objective good faith and is insubordination. The employer has established disqualifying, job-related misconduct on the part of Mr. O'Neill, so he is not eligible for UI benefits.

DECISION:

The July 9, 2024 (reference 01) UI decision is AFFIRMED. The employer discharged Mr. O'Neill from employment on June 13, 2024 for disqualifying, job-related misconduct. Mr. O'Neill is not eligible for UI benefits until he has worked in and been paid wages for insured work equal to ten times his weekly UI benefit amount, as long as no other decision denies him UI benefits.



Daniel Zeno
Administrative Law Judge

July 31, 2024
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 IA 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 IA 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 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.