

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

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**JONATHON W GUNTER**  
Claimant

**APPEAL 24A-UI-01315-PT-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**LETICA CORPORATION**  
Employer

**OC: 12/31/23  
Claimant: Respondent (2)**

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

**STATEMENT OF THE CASE:**

The employer, Letica Corporation, filed an appeal from the unemployment insurance decision dated January 25, 2024, (reference 01), that held the claimant eligible for benefits after a separation from employment. After due notice, a telephone hearing was held on February 23, 2024. The claimant, Jonathon Gunter, participated personally. The employer participated through Human Resources Manager Heidi Rock. 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:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant began working for Letica Corporation on September 21, 2021. Most recently, he worked full-time hours as a Packer-Handler. The claimant's employment ended on November 3, 2023, when he was discharged for failing to contact the employer or provide documentation excusing his absences.

The claimant had been on leave for a non-work related illness after he last reported to work on May 29, 2023. On July 7, 2023, the employer mailed the claimant a letter along with paperwork informing the claimant that his FMLA would be exhausted on August 18, 2023. The letter explained that the claimant's medical provider must complete the paperwork to either extend the claimant's leave or release him to return to work. The claimant did not respond to the letter and his doctor did not complete and return the paperwork. The claimant did not arrive for his shift on August 19, 2023, after the expiration of his FMLA leave.

On August 23, 2023, the claimant's doctor sent the employer a letter releasing claimant to return to work, but stating that the claimant needed "modified activity" because of ongoing medical issues. The claimant's doctor did not provide any specific medical restrictions or limitations that the claimant's required nor any medical substantiation for claimant's modified activities.

Shortly thereafter, the employer called the claimant's home telephone number and spoke with the claimant's spouse. The employer explained that it needed the claimant's medical provider to submit formal return-to-work paperwork either fully releasing the claimant to return or providing specific medical limitations and restrictions. The employer never received any such paperwork.

Throughout September and October 2023, the employer called and emailed the claimant several times asking the claimant whether he intended to return to work and asking him to provide the necessary medical documentation excusing the claimant for his ongoing absences. The claimant never responded to the employer's phone calls or emails.

On October 27, 2023, the employer mailed the claimant a certified letter explaining that his FMLA leave had expired and that his job was no longer protected. The letter informed the claimant that if he required additional leave time he must contact the Human Resources Department by November 3, 2023 or his employment would be terminated. The claimant did not contact the employer by the November 3, 2023, deadline and the employer had no further contact with the claimant. The employer terminated the claimant's employment effective November 3, 2023, due to the claimant's failure to respond to the certified letter and for his excessive unexcused absences in violation of the employer's attendance policy.

The claimant's administrative record reflects that the claimant has filed no weekly claims and has received no unemployment insurance benefits since filing an initial claim with an effective date of December 31, 2023. The employer did not participate in the fact-finding interview.

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

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

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. 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 misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). 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). When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986).

Excessive absences are not considered misconduct unless unexcused. Absences due to properly reported illness cannot constitute work-connected misconduct since they are not volitional, even if the employer was fully within its rights to assess points or impose discipline up to or including discharge for the absence under its attendance policy. Iowa Admin. Code r. 871-24.32(7); *Cosper*, supra; *Gaborit v. Emp't Appeal Bd.*, 734 N.W.2d 554 (Iowa Ct. App. 2007).

The issue in this case is not why the claimant was absent for the working days between August 19, 2023, and November 3, 2023. Rather, the deciding point is whether the employer's instruction was reasonable and whether the claimant failed to follow it in good faith or for good cause. The employer's instruction to the claimant—to contact the employer and explain whether

he intended to return to work and, if not, to provide documentation medically substantiating his need for continued leave—was reasonable. The employer had to comply with its FMLA contract and policies, and no reasonable employer would permit an employee multiple weeks-long unexcused absences without FMLA-covered leave.

The claimant has not demonstrated that his failure to follow the employer's instructions was in good faith or for good cause. Even if the claimant was having difficulty obtaining the necessary paperwork from his medical provider, the employer's certified letter and repeated calls and emails to the claimant instructed the claimant to contact the employer and explain whether he intended to return or needed additional leave. However, the claimant never contacted the employer and he has not provided a good-cause explanation for his failure to do so. As such, the employer has demonstrated that the claimant was discharged for disqualifying misconduct. Benefits must be withheld.

Because no benefits were paid to the claimant, the issues of overpayment, repayment and chargeability are moot.

**DECISION:**

The January 25, 2024, (reference 01) unemployment insurance decision is reversed. The claimant was discharged on November 3, 2023, for disqualifying, job-related misconduct. Unemployment insurance benefits shall be withheld until the claimant has worked in and been paid wages for insured work equal to ten times the claimant's weekly benefit amount, provided the claimant is otherwise eligible. The issues of overpayment, repayment and chargeability are moot.



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Patrick B. Thomas  
Administrative Law Judge

February 26, 2024  
Decision Dated and Mailed

PBT/TE

**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. *There is no filing fee to file an appeal with the Employment Appeal Board.*

**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 file a petition for judicial review in district court.

2. If you do not file 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 [www.iowacourts.gov/efile](http://www.iowacourts.gov/efile). *There may be a filing fee to file the petition in District Court.*

**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. *No hay tarifa de presentación para presentar una apelación ante la Junta de Apelación de Empleo.*

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 no presenta una apelación de la decisión del juez ante la Junta de Apelación de Empleo dentro de los quince (15) días, la decisión se convierte en una acción final de la agencia y tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días. Puede encontrar información adicional sobre cómo presentar una petición en [www.iowacourts.gov/efile](http://www.iowacourts.gov/efile). *Puede haber una tarifa de presentación para presentar la petición en el Tribunal de Distrito.*

**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.