

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

DENISE SUMOWSKI-ANDERSON
Claimant

W C D C INC
Employer

APPEAL 23A-UI-07559-DZ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 07/02/23
Claimant: Respondent (1)**

Iowa Code § 96.5(2)a – Discharge

STATEMENT OF THE CASE:

W C D C Inc, the employer/appellant,¹ appealed the Iowa Workforce Development (IWD) July 19, 2023 (reference 01) unemployment insurance (UI) decision. The decision allowed Ms. Sumowski-Anderson (Anderson)² REGULAR (state) UI benefits because IWD concluded the employer dismissed her from work on February 9, 2023 for a reason that did not disqualify her from receiving UI benefits. On August 4, 2023, the Iowa Department of Inspections, Appeals, and Licensing (DIAL), UI Appeals Bureau mailed a notice of hearing to the employer and Ms. Sumowski-Anderson for a telephone hearing scheduled for August 21, 2023.

The undersigned administrative law judge held a telephone hearing on August 21, 2023. The employer participated through Tammy Burlingame, vice president and Mary Ann White, associate director. Ms. Anderson participated personally. The undersigned rescheduled the hearing to give Ms. Anderson an opportunity to receive and review the employer's appeal documents. On August 24, 2023, the Iowa Department of Inspections, Appeals, and Licensing, UI Appeals Bureau mailed a notice of hearing to the employer and Ms. Anderson for a telephone hearing scheduled for August 28, 2023.

The undersigned administrative law judge held a telephone hearing on August 28, 2023. The employer participated through Tammy Burlingame, vice president and Mary Ann White, associate director. Ms. Anderson participated personally. The undersigned took official notice of the administrative record and admitted Employer's Exhibit 1 as evidence. The undersigned did not admit the documents Ms. Anderson submitted as evidence because she sent the documents to the DIAL UI Appeals about thirty minutes before the hearing and she did not send them to the employer.

ISSUES:

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

Did IWD overpay Ms. Anderson UI benefits?

If so, should she repay the benefits?

¹ Appellant is the person or employer who filed the appeal.

²² Ms. Anderson asked to be addressed as such during the appeal hearing.

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: Ms. Anderson began working for the employer in September 2021. She worked as a part-time direct support professional. Her employment ended on February 9, 2023.

Part of Ms. Anderson's job was to do laundry at a nursing home and train clients of the employer to do the same. The laundry Ms. Anderson was tasked with cleaning included both personal items for nursing home residents and other items, such as bed sheets and towels. A few days before February 8, the nursing home told the employer that nursing home staff would take care of nursing home resident's personal laundry. The employer conveyed this information to Ms. Anderson.

On February 8, a supervisor at the nursing home asked Ms. Anderson to wash the personal items of a nursing home resident because the resident had a bowel movement incident. Ms. Anderson told the nursing home supervisor that she would not wash the resident's personal items because the employer told her that she was not to wash resident's personal items – only other items. The nursing home supervisor told Ms. Anderson that this situation was an exception. Ms. Anderson repeated her earlier answer. The nursing home supervisor told Ms. Anderson that the nursing home supervisor would clean the resident's personal items. The nursing home supervisor was not Ms. Anderson's supervisor.

Ms. Anderson then texted Ms. Burlingame and relayed what had happened. Ms. Burlingame responded that Ms. Anderson is to wash the resident's clothes if the nursing home staff wanted her to do so. Ms. Anderson said okay.

Around the same time, the nursing home supervisor contacted the employer. Ms. Burlingame was not in the office at the time, but she spoke with the nursing home supervisor later that day. The supervisor told Ms. Burlingame about the situation and stated that the supervisor was frustrated that Ms. Anderson did not do what the supervisor asked. The supervisor told Ms. Burlingame that the nursing home did not want Ms. Anderson to work at the nursing home any more. Ms. Burlingame then sent Ms. Anderson a text asking to meet on February 9 at 10:00 a.m. That evening, the nursing home supervisor sent Ms. Burlingame and two other employees of the employer an email summarizing the incident with Ms. Anderson. The supervisor told Ms. Burlingame that Ms. Anderson was no longer welcome at the nursing home.

Ms. Anderson and Ms. Burlingame met on February 9. Ms. Burlingame told Ms. Anderson that her employment was over because of the incident on February 8. Ms. Burlingame ended Ms. Anderson's employment because the employer did not have work available for Ms. Anderson since the nursing home no longer wanted Ms. Anderson to work at the nursing home.

IWD has not paid Ms. Anderson any REGULAR (state) UI benefits on her UI claim.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the undersigned concludes the employer discharged Ms. Anderson 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.

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 purpose of the subrule is to assure that an employer does not save up acts of misconduct and spring them on an employee when an independent desire to terminate arises.

The employer has the burden of proof in establishing disqualifying job misconduct.³ 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.⁴ Misconduct must be "substantial" to warrant a denial of job insurance benefits.⁵

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.

The most recent incident leading to the employer discharging Ms. Anderson must be a current act of misconduct to disqualify her from receiving UI benefits. The most recent act for which the employer terminated Ms. Anderson's employment was because Ms. Anderson did not wash one nursing home resident's personal items after the employer told her that nursing home staff would take care of nursing home resident's personal laundry. It is reasonable for Ms. Anderson to follow the employer's directions and not agree to the exception the nursing home supervisor proposed for the one resident. In this case, the employer has not established a current act of misconduct on the part of Ms. Anderson. Ms. Anderson is eligible for UI benefits/

³ *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982).

⁴ *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984).

⁵ *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984).

Since Ms. Anderson is eligible for REGULAR (state) UI benefits per this decision, the issues of overpayment and repayment are moot. An issue being moot means there is nothing left to decide.⁶

DECISION:

The July 19, 2023, (reference 01) UI decision is AFFIRMED. The employer discharged Ms. Anderson from employment for a reason that does not disqualify her from receiving UI benefits. Benefits are allowed, as long as no other decision denies Ms. Anderson UI benefits.



Daniel Zeno
Administrative Law Judge

August 30, 2023
Decision Dated and Mailed

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⁶ *Iowa Bankers Ass'n v. Iowa Credit Union Dep't*, 335 N.W.2d 439, 442 (Iowa 1983).

APPEAL RIGHTS. If you disagree with this 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
4th 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.