

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

NASIB SECONDO

Claimant

APPEAL 23A-UI-08887-DZ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC

Employer

OC: 08/06/23

Claimant: Respondent (1)

Iowa Code § 96.5(2)a – Discharge

STATEMENT OF THE CASE:

Tyson Fresh Meats Inc, the employer/appellant,¹ appealed the Iowa Workforce Development (IWD) September 7, 2023 (reference 01) unemployment insurance (UI) decision. IWD found Ms. Secondo eligible for REGULAR (state) UI benefits because IWD concluded the employer dismissed her from work on July 5, 2023 for a reason that did not disqualify her from receiving UI benefits. On September 19, 2023 the Iowa Department of Inspections, Appeals, and Licensing (DIAL), UI Appeals Bureau mailed a notice of hearing to the employer and Ms. Secondo for a telephone hearing scheduled for October 3, 2023.

The undersigned administrative law judge held a telephone hearing on October 3, 2023. The employer participated through Daniel Horton, human resources partner. Ms. Secondo participated in the hearing personally through a CTS Language Link Somali interpreter. The undersigned took official notice of the administrative record and admitted Employer's Exhibit 1 as evidence.

ISSUE:

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

Did IWD overpay Ms. Secondo UI benefits?

If so, should she repay the benefits?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: Ms. Secondo began working for the employer in 2012. She worked as a full-time styler. Her employment ended on July 5, 2023.

Ms. Secondo injured her hand at work some time before June 2023. On June 29, Ms. Secondo's hand began hurting and she reported to the employer that she had injured her hand at work. The employer investigated by reviewing video footage from that day and talking with Ms. Secondo. The employer concluded that Ms. Secondo did not injure her hand at work and

¹ Appellant is the person or employer who appealed.

that she said she injured her hand at work so the employer would move her to a different workstation. The employer ended Ms. Secondo's employment for falsely reporting an on-the-job injury.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the undersigned concludes the employer discharged Ms. Secondo 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.² 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.³ Misconduct must be "substantial" to warrant a denial of job insurance benefits.⁴

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.

In this case, the employer ended Ms. Secondo's employment based on its conclusion that she lied about injuring her hand at work on June 29. Ms. Secondo did injure her hand at work. English is not Ms. Secondo's primary language and it appears that the employer's

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

³ *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984).

⁴ *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984).

understanding of what Ms. Secondo was reporting and what Ms. Secondo believed she was reporting did not match. This mismatch, however, does not equal disqualifying, job-related misconduct on the part of Ms. Secondo. Since the employer has not established disqualifying, job-related misconduct, Ms. Secondo is eligible for UI benefits.

Since Ms. Secondo 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.⁵

DECISION:

The September 7, 2023 (reference 01) UI decision is AFFIRMED. The employer discharged Ms. Secondo from employment for a reason that does not disqualify her from receiving UI benefits. Ms. Secondo is eligible for UI benefits, as long as no other decision denies her UI benefits.



Daniel Zeno
Administrative Law Judge

October 11, 2023
Decision Dated and Mailed

DZ/jkb

⁵ *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.