

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

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**SUSANA BORJAS CHOEZ**  
Claimant

**APPEAL 23A-UI-08661-LJ-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**STAFF MANAGEMENT SOLUTIONS LLC**  
Employer

**OC: 08/13/23  
Claimant: Respondent (2)**

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Iowa Code § 96.5(2)a – Discharge from Employment

**STATEMENT OF THE CASE:**

On September 11, 2023, employer Staff Management Solutions LLC filed an appeal from the August 30, 2023 (reference 01) unemployment insurance decision that allowed benefits after claimant Susana Borjas Choez's separation from employment. The parties were properly notified of the hearing. A telephonic hearing was held at 11:00 a.m. on Tuesday, September 26, 2023. Claimant Susana Borjas Choez did not appear and did not participate. Employer Staff Management Solutions Inc. participated through Susan Murphy, Senior Account Manager. Employer's Exhibits 1, 2, 3, and 4 were received and admitted into the record. The administrative law judge took official notice of the administrative record.

**ISSUE:**

Was the claimant discharged for disqualifying, job-related misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for this employer on April 1, 2022. Most recently, she worked full-time hours as a production worker. Claimant's employment ended on August 10, 2023, when the employer discharged her for engaging in three unsafe acts within a one-year period.

On August 9, a trainer saw claimant using a rudimentary homemade sharp tool to poke open plastic bags on the production line. Claimant was supposed to use the approved "marta knife" to open plastic bags on the line, because that tool could not cut a human. The sharp tool claimant was seen using could cut a human and harm them.

Later, someone found the tool and turned it into the supervisor. After learning that the claimant had been seen using the tool, the supervisor called claimant into the office and asked her about it. Claimant said she simply found the tool and started using it. Claimant was suspended and sent home pending an investigation. The employer looked into claimant's disciplinary history and found two prior warnings for safety issues. Based on the final incident and the history of warnings, the employer discharged claimant.

Claimant received a written warning on June 30, 2023 for wearing open-toed sandals into the plant. (Exhibit B) She had entered the plant on her day off to get her schedule, but open-toed shoes were not permitted in the plant. Claimant could have called the plant or the supervisor to get her schedule; she could have used the app to get her schedule; and she could have gone to the recruiting office approximately one mile away to acquire her schedule. Claimant received a written warning on May 4, 2023 for not wearing her safety gloves while at work. She had been cleaning the conveyor belt without wearing her gloves, and she pinched her finger in the belt. The employer's safety rules require all employees to wear gloves while on the production line. The employer supplies these gloves and also provides replacements whenever an employee's gloves become torn, dirty, ripped, or otherwise unusable. Both written warnings notified claimant that further safety violations may be grounds for discharge from employment.

The administrative record reflects that claimant has received no unemployment benefits since filing a claim with an effective date of August 13, 2023.

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

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for disqualifying misconduct. Benefits are withheld.

Iowa Code section 96.5(2)(a) and (d) provide:

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 disqualification shall continue 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 even 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. Misconduct by an individual includes but is not limited to all of the following: ...

(2) Knowing violation of a reasonable and uniformly enforced rule of an employer.

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).

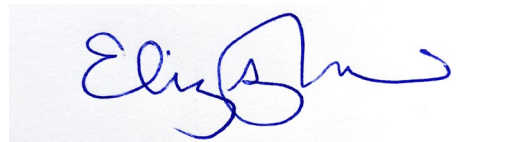
The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). What constitutes misconduct justifying termination of an employee and 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). The focus is on deliberate, intentional, or culpable acts by the employee.

The employer has presented credible testimony and documentation showing claimant was discharged for violating the employer's safety rules by using a dangerous knife capable of harming claimant herself or one of her coworkers. Claimant had been warned multiple prior times for violations of the employer's safety rules. She was aware her job was in jeopardy for continued disregard of the safety expectations at work. The employer has established claimant committed deliberate disregard for the standards of behavior the employer had the right to expect of her, amounting to disqualifying misconduct. Benefits are withheld.

As claimant has received no benefits since separating from employment and opening her claim for benefits, the issues of overpayment and chargeability are moot.

**DECISION:**

The August 30, 2023 (reference 01) unemployment insurance decision is reversed. Claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The issues of overpayment and chargeability are moot.



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Elizabeth A. Johnson  
Administrative Law Judge

September 27, 2023  
Decision Dated and Mailed

**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 adquiriera 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.