

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

**TONYA S STRUVE**

Claimant

**APPEAL 23A-UI-08507-DZ-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**KELLIE KERTON INSURANCE AND FINANC**

Employer

**OC: 08/13/23**

**Claimant: Appellant (2)**

Iowa Code § 96.5(2)a – Discharge

**STATEMENT OF THE CASE:**

Tonya S. Struve, the claimant/appellant,<sup>1</sup> appealed the Iowa Workforce Development (IWD) August 31, 2023 (reference 01) unemployment insurance (UI) decision. IWD found Ms. Struve not eligible for REGULAR (state) UI benefits because IWD concluded the employer discharged her from work on August 16, 2023 because she did not perform satisfactory work even though she was capable of doing so. On September 8, 2023 the Iowa Department of Inspections, Appeals, and Licensing, UI Appeals Bureau mailed a notice of hearing to Ms. Struve and the employer for a telephone hearing scheduled for September 21, 2023.

The undersigned administrative law judge held a telephone hearing on September 21, 2023. Ms. Struve participated in the hearing personally. Emly Wilson, attorney, represented Ms. Struve. The employer participated in the hearing through Kelli Kerton, president and owner. The undersigned administrative law judge took official notice and admitted Claimant's Exhibits A-B and Employer's Exhibits 1-20.

**ISSUE:**

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

**FINDINGS OF FACT:**

Having reviewed the evidence in the record, the administrative law judge finds: Ms. Struve began working for the employer in October 2022. She worked as a full-time office manager. Her employment ended on August 15, 2023.

On Friday, August 11, Ms. Struve and another employee were the last two employees to leave for the day. Ms. Struve, as office manager, was required to lock the door at the end of the day. Ms. Struve did not do so this day. The next day, Ms. Kerton received a notice that there was movement in the employer's office. Ms. Kerton looked at the video footage and saw two unidentified people in the office. Ms. Kerton reviewed video footage from earlier in the day and saw that Ms. Struve had not locked the door when she left. On Sunday, August 13, Ms. Kerton

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<sup>1</sup> Claimant is the person who filed the UI claim with IWD. Appellant is the person or employer who filed the appeal.

sent Ms. Struve a text asking why the door was unlocked. Ms. Struve responded that she and another employee left together, and asked why the employer was putting the responsibility on her. Ms. Kerton texted Ms. Struve that Ms. Struve did not need to attend work the following day, Monday, August 14.

Ms. Kerton and Ms. Struve met at a coffee shop on Tuesday, August 15. Ms. Kerton talked about Ms. Struve not meeting the employer's work expectations, Ms. Struve's hours, attendance issues, and the unlocked door incident. During the conversation, Ms. Kerton concluded that Ms. Struve was not a good fit for the employer because Ms. Kerton did not trust that Ms. Struve would meet the employer's work expectations and she did not trust Ms. Struve because of the unlocked door incident. So, Ms. Kerton terminated Ms. Struve employment.

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

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

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

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

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

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

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. Struve's employment because Ms. Struve was not a good fit. It is understandable that Ms. Kerton's trust in Ms. Struve's work performance was shaken because of the unlocked door incident. But Ms. Struve unintentionally left the door unlocked (but closed) and the employer has not established that Ms. Struve's actions rise to the level of misconduct. Since the employer has not established disqualifying, job-related misconduct, Ms. Struve is eligible for UI benefits, as long as no other decision denies her UI benefits.

**DECISION:**

The August 31, 2023 (reference 01) UI decision is REVERSED. The employer discharged Ms. Struve from employment for a reason that does not disqualify her from receiving UI benefits. Ms. Struve is eligible for UI benefits, as long as no other decision denies her UI benefits. Any UI benefits Ms. Struve claimed and IWD withheld on this basis must be paid.



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Daniel Zeno  
Administrative Law Judge

September 25, 2023  
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:

**Employment Appeal Board**  
**4<sup>th</sup> Floor – Lucas Building**  
**Des Moines, Iowa 50319**  
**Fax: (515)281-7191**  
**Online: [eab.iowa.gov](http://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](http://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.