

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

---

**BLAKE E COOPER**  
Claimant

**FAREWAY STORES INC**  
Employer

**APPEAL 24A-UI-03471-DS-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 03/03/24  
Claimant: Respondent (1)**

Iowa Code § 96.5(2)a – Discharge  
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:**

On April 1, 2024, the employer filed an appeal from the unemployment insurance decision dated March 25, 2024, (Reference 01) that allowed benefits. Notice of hearing was mailed to the parties' last known addresses of record for a telephone hearing to be held on April 23, 2024. The claimant participated personally. The employer participated through Stephanie Rohrer, Human Resources Manager, and Brian Sitker, Meat Market Manager. Employer's Exhibits 1-9 were admitted to the record. The administrative law judge took official notice of the administrative record.

**ISSUES:**

Was the claimant separated from the employment for job-related misconduct?  
Was the claimant overpaid benefits?  
Should the claimant repay benefits or should the employer be charged based upon participation in the fact-finding interview?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds:

The claimant worked for this employer from March 7, 2022, until February 27, 2024, when he was discharged by the employer. At the time of the separation, the claimant was a full-time Market Clerk and reported to Brian Sitker. The final incident leading to the discharge occurred on February 21, 2024. The claimant was working an evening shift and needed to sell a quantity of a beef product before close, as the employer does not keep it into the next day. The claimant had authority to adjust the price based upon customer demand and the amount of time remaining before close, but there is no formal rule in this regard. The claimant sold a customer a large quantity of the product at \$3.99 per pound early in the evening. The customer stated that they wanted all of what was available at that price, but the claimant felt that it was too early in the evening for the product to be sold out. The claimant had previously received negative feedback from his supervisor when he had sold out of products at discounted rates too early in the evening. As a result, the claimant set aside a quantity to be available for sale later in the evening.

At closing time, there was still a small quantity remaining that had not sold. When this is the case, employees are authorized to purchase the remainder at \$1.99 per pound. The claimant paid the \$1.99 per pound price for approximately two pounds of product at closing time. This was reported to the employer and an investigation was conducted. The employer determined that the claimant should have sold all of the product to the customer at \$3.99 per pound rather than setting any aside. The employer called the claimant to a meeting on February 27, 2024, for the sole purpose of discharging him due to "lack of attention to duty." (Employer's Exhibit 8) The claimant handed the employer a letter of resignation in conjunction with the discharge.

The claimant's administrative records indicate that the claimant filed his original claim for benefits with an effective date of March 3, 2024. The claimant has received total unemployment insurance benefits of \$4,224.00. 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 the claimant was discharged from the employment for no disqualifying reason. Benefits are allowed.

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.

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 the 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 suspension of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions.

It is the duty of the administrative law judge, as the trier of fact, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other evidence you believe; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

The employer has not met its burden of proof in establishing disqualifying misconduct. The claimant used his best judgment to determine what would need to be available for customers later in the shift and misjudged it by a small amount. The claimant was attempting to address previous feedback he had received, and nothing in the record would indicate he intentionally undersold the product to gain a personal advantage. While the employer may be within its rights to discharge the claimant, there is no current act in the record that would constitute disqualifying misconduct in the context of eligibility for unemployment insurance benefits, and the employer has not met its burden to show that the claimant engaged in disqualifying misconduct. Benefits are allowed.

Because the claimant's separation was not disqualifying, the issues of overpayment, repayment and chargeability are moot.

**DECISION:**

The decision dated March 25, 2024, (Reference 01) that allowed unemployment insurance benefits is **AFFIRMED**. The claimant was discharged from the employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible. The issues of overpayment, repayment and chargeability are moot.



---

David J. Steen  
Administrative Law Judge

---

May 2, 2024  
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:

**Iowa Employment Appeal Board  
6200 Park Avenue Suite 100  
Des Moines, Iowa 50321  
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. *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](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. *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.