

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

MARIE G ROBERTS
Claimant

APPEAL 24A-UI-02600-DZ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

COMPREHENSIVE SYSTEMS INC
Employer

**OC: 02/04/24
Claimant: Appellant (2)**

Iowa Code § 96.5(2)a – Discharge

STATEMENT OF THE CASE:

Marie G. Roberts, the claimant/appellant,¹ appealed the Iowa Workforce Development (IWD) February 23, 2024 (reference 01) unemployment insurance (UI) decision. IWD denied Ms. Roberts REGULAR (state) UI benefits because IWD concluded the employer discharged her from employment on February 7, 2024 for insubordination at work. On March 11, 2024, the Iowa Department of Inspections, Appeals, and Licensing (DIAL), UI Appeals Bureau mailed a notice of hearing to Ms. Roberts and the employer for a telephone hearing scheduled for March 29, 2024.

The administrative law judge held a telephone hearing on March 29, 2024. Ms. Roberts participated in the hearing personally. The employer participated in the hearing through Sheryl Heyenga, human resources director, and Caroline Repp, program director. The administrative law judge admitted Employer's Exhibit 1 as evidence.

ISSUE:

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

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: Ms. Roberts began working for the employer in December 2020. She worked as a full-time direct support professional. Her employment ended on February 7, 2024.

On February 6, Ms. Roberts went to work at 3:30 p.m. As Ms. Roberts was working, she saw a supervisor (Supervisor A) in the room of a person Ms. Roberts was to provide care for (Person A) training a new employee. Ms. Roberts checked the room twice and saw Supervisor A and the new employee were in the room both times. So, Ms. Roberts did other work tasks.

¹ Claimant is the person who applied for UI benefits. Appellant is the person or employer who appealed.

Another supervisor, Supervisor B, then yelled at Ms. Roberts to go to Person A's room and provide care. Ms. Roberts asked Supervisor B why she was yelling and told Supervisor B that she had not cared for Person A because Supervisor A and the new employee were in Person A's room. Ms. Roberts went to Person A's room and provided care.

Ms. Roberts phone was in her bag. Ms. Roberts did not have earbuds in her ears. Ms. Roberts finished her work and left at the end of her shift.

Supervisor B and Supervisor A reported to Ms. Repp, who is their manager, that Ms. Roberts was on her phone, had earbuds in and was not doing her job. They reported that Ms. Roberts eventually provided care for Person A but then went back on her phone.

Ms. Repp and Ms. Heyenga discussed the matter the next day. The employer's policy prohibits employees from using their phones during work time unless the employer approves such use and prohibits employees from using electronic devices for personal use at work. Ms. Roberts acknowledged receiving a copy of the policy on her hire date. The employer had previously suspended Ms. Roberts in January 2024 and September 2023 for insubordination. Ms. Repp and Ms. Heyenga concluded that the employer should terminate Ms. Roberts' employment. The employer contacted Ms. Roberts and terminated her employment for insubordination. In the termination meeting, Ms. Roberts denied being on her phone, having earbuds in, and not following instructions.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the employer discharged Ms. Roberts from employment on February 7, 2024 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.

The most recent incident leading the employer to discharge Ms. Roberts must be a current act of misconduct to disqualify her from receiving UI benefits. The most recent act for which the employer terminated Ms. Roberts’ employment was for insubordination.

Continued failure to follow reasonable instructions constitutes misconduct.⁵ But, an employee’s failure to perform a specific task may not constitute misconduct if such failure is in good faith.⁶ The administrative law judge must analyze situations involving alleged insubordination by evaluating the reasonableness of the employer’s request in light of the circumstances, along with the employee’s reason for non-compliance.⁷ Good faith under this standard is not determined by the claimant’s subjective understanding. Good faith is measured by an objective standard of reasonableness. Otherwise, benefits might be paid to someone whose “behavior is in fact grounded upon some sincere but irrational belief and where the behavior may be properly deemed misconduct.”⁸ “The key question is what a reasonable person would have believed under the circumstances.”⁹

In this case, the employer has failed to establish that Ms. Roberts was insubordinate. Ms. Roberts credibly denied being on her phone or having earbuds in on February 6, and credibly asserted that she provided care for Person A. The employer agrees that Ms. Roberts, in fact, provided care for Person A. Ms. Roberts testified from her personal knowledge of the situation. The employer’s testimony, on the other hand, was Ms. Heyenga and Ms. Repp testifying about what Supervisor A and B told them. Neither Ms. Heyenga nor Ms. Repp asked Ms. Roberts about what happened. They simply believed Supervisors A and B and terminated Ms. Roberts’ employment. The employer has failed to establish disqualifying, job-related misconduct on the part of Ms. Roberts. Ms. Roberts is eligible for UI benefits.

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).

⁵ See *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990).

⁶ See *Woods v. Iowa Department of Job Service*, 327 N.W.2d 768, 771 (Iowa 1982).

⁷ See *Endicott v. Iowa Department of Job Service*, 367 N.W.2d 300 (Iowa Ct. App. 1985).

⁸ *Aalbers v. Iowa Department of Job Service*, 431 N.W.2d 330, 337 (Iowa 1988).

⁹ *Aalbers v. Iowa Department of Job Service*, 431 N.W.2d 330, 337 (Iowa 1988); accord *O’Brien v. EAB*, 494 N.W.2d 660 (Iowa 1993)(objective good faith is test in quits for good cause).

DECISION:

The February 23, 2024 (reference 01) UI decision is REVERSED. The employer discharged Ms. Roberts from employment on February 7, 2024 for a reason that does not disqualify her from receiving UI benefits. Ms. Roberts is eligible for UI benefits, as long as no other decision denies her UI benefits.



Daniel Zeno
Administrative Law Judge

April 1, 2024
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
6200 Park Avenue Suite 100
Des Moines IA 50321
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
6200 Park Avenue Suite 100
Des Moines IA 50321
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.