

**IOWA DEPARTMENT OF INSPECTIONS AND APPEALS
ADMINISTRATIVE HEARINGS DIVISION, UI APPEALS BUREAU**

JAMES T COOPER
Claimant

ATLANTIC BOTTLING CO
Employer

APPEAL 23A-UI-04005-S2-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 03/19/23
Claimant: Respondent (2)**

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quit
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

STATEMENT OF THE CASE:

The employer filed an appeal from the April 6, 2023, (reference 01) unemployment insurance decision that allowed benefits based upon a finding that claimant was discharged with no evidence of misconduct. The parties were properly notified about the hearing. A telephone hearing was held on May 3, 2023. Claimant James T. Cooper did not participate. Employer Atlantic Bottling Co. participated through human resources business partner Shirley Jones, general manager Keith Lensing, distribution supervisors Ben Smith and John Korenberg, and safety manager Doug Jansen. Employer's Exhibits 1 – 3 were received. The administrative law judge took official notice of the administrative record.

ISSUES:

Was the claimant discharged for disqualifying job-related misconduct?
Has the claimant been overpaid unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?

FINDINGS OF FACT:

As employer was the only witness, the administrative law judge makes the following findings of fact based solely upon employer's testimony and the administrative record: Claimant was employed full-time as a route driver from July 9, 2019, and was separated from employment on March 13, 2023, when he was discharged.

Employer maintains a policy which provides that in the event of a job-related accident, injury, or property damage, and employee must immediately notify their supervisor, no matter how minor. (Exhibit 1). Claimant was aware of the policy.

The final incident leading to discharge occurred on March 10, 2023. On that date, claimant was involved in an accident while driving his route. He did not immediately notify a supervisor that he was involved in an accident. He contacted a supervisor and stated his tractor's bumper fell off, but provided no further details, and he only did so sometime after he had driven the tractor

again. Once he arrived at back work, a supervisor asked the general manager if an accident had been reported because there was significant damage to the tractor. Mr. Lensing and Mr. Smith met claimant at the tractor to find out what happened. They noticed the bumper was missing, there was a hole in the air dam, the plastic around the fuel tank was ripped, and there was damage to the windshield. Claimant first told employer he swerved to avoid a car and had to drive on to the shoulder of the road. After further questioning, claimant stated the bumper fell off and he pulled into the median. He did not provide any other information about what happened despite repeated questioning by his supervisors. Employer was concerned by claimant's shifting stories, and because claimant had washed the tractor prior to returning it even though that was not something drivers were required to do. It believed claimant attempted to cover up the accident.

As part of their investigation into the matter, Mr. Smith and Mr. Lensing visited the site where the incident occurred. They found the bumper and a great deal of plastic lying in the ditch, as well as downed DOT signs that looked like they had been hit and knocked over. Based on their experience and the accident scene, they determined that claimant had driven into the ditch and hit the signs, leading to the damage, including causing the bumper to fall off. The accident caused approximately \$11,000.00 damage to the tractor.

The administrative record reflects that claimant has not received any unemployment benefits since filing a claim with an effective date of March 19, 2023. Employer participated in the fact-finding interview through witness Shirley Jones.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

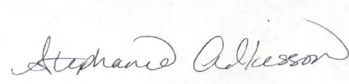
A determination as to whether an employee's act is misconduct does not rest solely on the interpretation or application of the employer's policy or rule. A violation is not necessarily disqualifying misconduct even if the employer was fully within its rights to impose discipline up to or including discharge for the incident under its policy. The 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).

The evidence demonstrates that claimant was discharged for a single accident in which claimant's tractor drove into a ditch. The result of the accident was significant damage to the tractor totaling \$11,000 in damages. Claimant failed to notify his supervisor immediately following the accident, and drove the tractor after doing so, potentially causing further damage to it. Further, he was not truthful with employer about the nature of the accident. The evidence demonstrates he tried to cover up the extent of the damage by washing the tractor before returning to work. Disqualification for a single misconduct incident must be a deliberate violation or disregard of standards of behavior which employer has a right to expect. *Diggs v. Emp't Appeal Bd.*, 478 N.W.2d 432 (Iowa Ct. App. 1991). Here claimant failed to comply with employer's safety policies regarding notification of accidents and/or damage immediately. Additionally, claimant was untruthful regarding the nature and extent of the accident during the investigation. Claimant's inability to control the tractor and to provide honest information regarding the accident are contrary to the standards the employer has a right to expect of its employees. The administrative law judge is persuaded claimant knew or should have known his conduct was contrary to the best interests of the employer. Therefore, based on the evidence presented, claimant was discharged for misconduct, even without prior warning. Benefits are denied.

Because no benefits were paid to claimant, the issues of overpayment, repayment and chargeability are moot.

DECISION:

The April 6, 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 he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The issues of overpayment, repayment and chargeability are moot.



Stephanie Adkisson
Administrative Law Judge

May 4, 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
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 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.