

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

SKYLAR E PRICE

Claimant

APPEAL NO. 24A-UI-01167-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

ADVANCED PROBLEMS SOLUTIONS LLC

Employer

OC: 12/17/23

Claimant: Respondent (2)

Iowa Code Section 96.5(2)(a) &(d) – Discharge for Misconduct
Iowa Code Section 96.3(7) - Overpayment

STATEMENT OF THE CASE:

On January 29, 2024, the employer filed a timely appeal from the January 19, 2024 (reference 01) decision that allowed benefits to the claimant, provided the claimant met all other eligibility requirements, and that held the employer's account could be charged for benefits, based on the deputy's conclusion that the claimant was discharged on November 26, 2023 for no disqualifying reason. After due notice was issued, a hearing was held on February 20, 2024. Skylar Price (claimant) participated. Bob Daniels represented the employer and presented additional testimony through Cindy Knaus, Angela Moriarty and Rod Brace. Exhibits 1 through 7 were received into evidence. The administrative law judge took official notice of the following agency administrative records: DBRO & KFFV. The administrative law judge took official notice of the fact-finding materials for the limited purpose of documenting the employer's participation in the fact-finding interview.

ISSUES:

Whether the claimant was laid off, was discharged for misconduct in connection with the employment, or voluntarily quit without good cause attributable to the employer.

Whether the claimant was overpaid benefits.

Whether the claimant must repay overpaid benefits.

Whether the employer's account may be charged.

FINDINGS OF FACT:

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

Skylar Price was employed by Advanced Problems Solutions, L.L.C. as a full-time sales and customer relations agent from September 2022 until November 26, 2023, when the employer discharged him from the employment. Mr. Price reported to Bob Daniels, Vice President, and Rod Brace, President. Mr. Price did not supervise other employees.

The employer's decision to discharge Mr. Price from the employment was based primarily on workplace bullying, but was also based on insubordinate behavior. Through his sales efforts, Mr. Price generated substantial revenue for the employer's HVAC business. Toward the end of the employment, Mr. Price took advantage of his revenue-generating value to the employer and commenced engaging in disruptive and bullying behavior that he directed at female staff members.

On Monday, November 20, 2023, Mr. Price participated in the weekly staff meeting. During the meeting, Mr. Price asserted that the company was growing too fast, that this was a bad thing, and that it was going to wreck the company. During that meeting, Cindy Knaus, who had just started with the employer on November 17, 2023 as Human Resources Manager, offered an opinion on the topic of change. Mr. Price bluntly told Ms. Knause that she had only been with the company a few days and that her opinion did not matter. Mr. Price intentionally embarrassed and demeaned Ms. Knause. During the same meeting, Mr. Price made the baseless assertion that Angela Moriarty, Finance Manager, was making unauthorized changes to invoices. Mr. Price's aggressive tone and offensive comments prompted the employer to prematurely shut down the staff meeting. The employer had to repeatedly tell Mr. Price to stop talking and had to disband the meeting to both remove the audience and free the two targets of Mr. Price's bullying behavior.

Half an hour after the meeting, Ms. Knaus went to Mr. Price's desk in an attempt to get her relationship with Mr. Price on a better footing. Mr. Price responded with stern, bullying utterances. Mr. Price told Ms. Knaus that she did not know what she was talking about and that there had been a lot of changes Ms. Knause knew nothing about. When Ms. Knaus started to explain that she was aware there had been a number of changes, Mr. Price yelled, "Lady, I don't even know why you are talking to me right now!" When Ms. Knaus said she wanted to get on the right foot, Mr. Price replied that she had only been there a few days, did not know what was going on, that it was none of her business, that she should not be part of the business, and that she was causing trouble. Mr. Price then sternly directed Ms. Knaus to go back to her desk and sit down. When Ms. Knaus did not immediately comply, Mr. Price ordered Ms. Knaus, "Sit down!" Other staff were present and witnessed the bullying behavior.

During the last week of the employment, the claimant made baseless allegations to the employer that Ms. Moriarty, the finance manager, was stealing from the employer. Mr. Price made baseless allegations to service staff that Ms. Moriarty was altering invoices in a manner that took money from staff. Mr. Price issued an ultimatum to the employer, that the employer must choose between Ms. Moriarty or Mr. Price. Mr. Price had previously made a similar ultimatum demanding that the employer demote or discharge the service manager, that the employer choose between the service manager and Mr. Price.

On November 22, 2023, Mr. Daniels and Mr. Brace met with Mr. Price for the purpose of discharging him from the employment. However, Mr. Daniels decided to consider giving Mr. Price one more chance. Mr. Daniels told Mr. Price to go home immediately after the meeting, to enjoy his holiday, to not speak to any coworkers, and that the employer would contact him with a decision regarding his continued employment. After the meeting, Mr. Price started to leave the workplace, but then reentered the workplace and made a beeline toward Ms. Moriarty, who was standing by the printer. Mr. Price gave Ms. Moriarty a hug and made a comment about having made a mistake. Ms. Moriarty was upset by the interaction and reported it to the employer. The employer was not pleased that Mr. Price disregarded the directive to immediately leave and to not further contact coworkers. Mr. Price subsequently contacted the employer in an attempt to persuade the employer not to end his employment. The claimant referenced the amount of revenue he expected to bring in during the coming year and stated he

hoped the employer would allow him to continue in the employment. The employer elected to discharge the claimant on November 26, 2023.

Mr. Price established an original claim for benefits that was effective December 17, 2023. Iowa Workforce Development set the weekly benefit amount at \$582.00. Mr. Price received \$2,328.00 in benefits for the four weeks between January 7, 2024 and February 3, 2024. This employer is the sole base period employer.

On January 17, 2024, Iowa Workforce Development Benefits Bureau held a fact-finding interview that addressed Mr. Price's separation from the employment. Bob Daniels represented the employer at the fact-finding interview.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(2)(a) and (d) provides as follows:

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 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. 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.

...

See also Iowa Admin. Code r. 871-24.32(1)(a) (repeating the language of the statute).

The employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See *Lee v. Employment Appeal Board*, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See *Gimbel v. Employment Appeal Board*, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

While past acts and warnings can be used to determine the magnitude of the current act of misconduct, a discharge for misconduct cannot be based on such past act(s). The termination of employment must be based on a current act. See Iowa Admin. Code r.871 24.32(8). In determining whether the conduct that prompted the discharge constituted a "current act," the administrative law judge considers the date on which the conduct came to the attention of the

employer and the date on which the employer notified the claimant that the conduct subjected the claimant to possible discharge. See also *Greene v. EAB*, 426 N.W.2d 659, 662 (Iowa App. 1988).

Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. See Iowa Admin. Code rule 87124.32(4).

An employer has the right to expect decency and civility from its employees and an employee's use of profanity or offensive language in a confrontational, disrespectful, or name-calling context may be recognized as misconduct disqualifying the employee from receipt of unemployment insurance benefits. *Henecke v. Iowa Department of Job Service*, 533 N.W.2d 573 (Iowa App. 1995).

Continued failure to follow reasonable instructions constitutes misconduct. See *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990). An employee's failure to perform a specific task may not constitute misconduct if such failure is in good faith or for good cause. See *Woods v. Iowa Department of Job Service*, 327 N.W.2d 768, 771 (Iowa 1982). 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 worker's reason for non-compliance. See *Endicott v. Iowa Department of Job Service*, 367 N.W.2d 300 (Iowa Ct. App. 1985).

It is the duty of the administrative law judge as the trier of fact in this case, 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 Ct. 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 believable evidence; 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 evidence in the record establishes a discharge for misconduct in connection with the employer. Mr. Price intentionally and repeatedly directed patently offensive, demeaning comments at female coworkers in an effort to bully those coworkers. Mr. Price's blanket denials were not credible and were rebutted through the testimony of multiple, credible witnesses and credible documentary evidence. Mr. Price made baseless assertions about those same female coworkers. Mr. Price unreasonably disregarded the employer's reasonable directives to desist from bullying behavior and to avoid contact with the coworkers following the November 22, 2023 meeting. Mr. Price's conduct demonstrated an intentional and substantial disregard of the employer's interests in maintaining a civil workplace, free of bullying behavior. Mr. Price's conduct exposed the employer to potential liability for gender-based workplace harassment if the employer failed to take prompt, reasonable and effective steps to terminate the bullying behavior. Mr. Price's underlying argument that the value he brought to the company mitigated or excused the bullying conduct must fail. Mr. Price is disqualified for benefits until he has worked in and been paid wages for insured work equal to 10 times his weekly benefit amount. Mr. Price must meet all other eligibility requirements.

Mr. Price received \$2,328.00 in benefits for the four weeks between January 7, 2024 and February 3, 2024, but this decision disqualifies Mr. Price for those benefits. The benefits Mr. Price received are an overpayment of benefits.

Iowa Code section 96.3(7) provides in relevant part as follows:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1)

(a) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. The employer shall not be relieved of charges if benefits are paid because the employer or an agent of the employer failed to respond timely or adequately to the department's request for information relating to the payment of benefits. This prohibition against relief of charges shall apply to both contributory and reimbursable employers. If the department determines that an employer's failure to respond timely or adequately was due to insufficient notification from the department, the employer's account shall not be charged for the overpayment.

(b) However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment.

Because the employer participated in the fact-finding interview, Mr. Price must repay the overpaid benefits. The employer's account will be relieved of charges for benefits, including charges for benefits already paid.

DECISION:

The January 19, 2024 (reference 01) decision is REVERSED. The claimant was discharged on November 26, 2023 for misconduct in connection with the employment. The claimant is disqualified for unemployment benefits until he has worked in and been paid wages for insured work equal to 10 times his weekly benefit amount. The claimant must meet all other eligibility requirements. The claimant is overpaid \$2,328.00 in benefits for the four weeks between January 7, 2024 and February 3, 2024. The claimant must repay the overpaid benefits. The employer's account is relieved of charges for benefits, including charges for benefits already paid.

A handwritten signature in cursive script that reads "James E. Timberland". The signature is written in dark ink on a light-colored background.

James E. Timberland
Administrative Law Judge

February 28, 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 Ave Suite 100
Des Moines, Iowa 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>.

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 Ave Suite 100
Des Moines, Iowa 50321
Fax: (515)281-7191
Online: 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 está en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

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.