

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

MARLIN D HOMRIGHAUSEN
Claimant

**EAGLE WINDOW & DOOR
MANUFACTURING**
Employer

APPEAL 24A-UI-00689-DZ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 12/17/23
Claimant: Appellant (2)**

Iowa Code § 96.5(2)a – Discharge

STATEMENT OF THE CASE:

Marlin D. Homrighausen, the claimant/appellant,¹ appealed the Iowa Workforce Development (IWD) January 11, 2024 (reference 01) unemployment insurance (UI) decision. IWD denied Mr. Homrighausen REGULAR (state) UI benefits because IWD concluded the employer discharged him from work on February 23, 2023 for not performing satisfactory work even though he was capable of doing so. On January 23, 2024, the Iowa Department of Inspections, Appeals, and Licensing (DIAL), UI Appeals Bureau mailed a notice of hearing to Mr. Homrighausen and the employer for a telephone hearing scheduled for February 2, 2024.

On February 1, 2024, Grant Rodgers, attorney, entered an appearance to represent Mr. Homrighausen, and requested that the hearing be rescheduled because Mr. Homrighausen had hired Mr. Rodgers that day and Mr. Homrighausen was scheduled to begin a new job on February 2.

The administrative law judge held a pre-hearing conference on February 2, 2024 at the time scheduled for the hearing. Mr. Rodgers participated in the conference. Neither Mr. Homrighausen nor the employer participated in the conference. The administrative law judge granted Mr. Homrighausen's request. On February 5, 2024, the DIAL, UI Appeals Bureau mailed a notice of hearing to Mr. Homrighausen, Mr. Rodgers, and the employer for a telephone hearing scheduled for February 19, 2024.

On February 19, 2024, Mr. Homrighausen called in to participate in the hearing. Mr. Rodgers did not call in. Mr. Homrighausen had not heard from Mr. Rodgers and was unsure of why he had not called in. Jennifer Schimon, human resources manager, called in to participate on behalf of the employer. Mr. Homrighausen tried to reach Mr. Rodgers during the conference. He was unable to do so. Both parties agreed to reschedule the hearing to Friday, February 23, 2024. The administrative law judge rescheduled the hearing to the agreed upon date. On February 20, 2024, the DIAL, UI Appeals Bureau mailed a notice of hearing to Mr. Homrighausen, Mr. Rodgers, and the employer for a telephone hearing scheduled for February 23, 2024.

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

The administrative law judge held a telephone hearing on February 23, 2024. Mr. Homrighausen participated in the hearing personally. Mr. Rodgers represented Mr. Homrighausen. The employer participated in the hearing through Jennifer Schimon, senior human resources (HR) business partner. The administrative law judge admitted Claimant's Exhibits A-B as evidence.

ISSUE:

Did the employer discharge Mr. Homrighausen from employment for disqualifying, job-related misconduct?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: Mr. Homrighausen began working for the employer in February 2022. He worked as a full-time machine operator 1. His employment ended on December 21, 2023.

Mr. Homrighausen was on short-term disability leave from February 27, 2023 through August 27, 2023. While he was on short-term disability leave, Mr. Homrighausen applied for long-term disability leave. The employer's third-party administrator denied Mr. Homrighausen long-term disability leave on August 28. As of August 28, Mr. Homrighausen's medical provider had not yet released him to return to work and he was not eligible for any other leave. The employer put Mr. Homrighausen on "unknown" status as of August 28.

On Tuesday, December 12, the employer sent Mr. Homrighausen a letter informing him that the employer placed him on unpaid leave for 5 days – Wednesday through Friday, December 13-15, and Monday and Tuesday, December 18 and 19. The letter also informed Mr. Homrighausen that if he did not either return to work, obtain approval for a "company-provided disability income replacement program" his employment would end on December 19. Mr. Homrighausen received the letter on December 12.

Mr. Homrighausen contacted his medical provider within a day of receiving the letter. On December 14, Mr. Homrighausen's medical provider sent a note to the employer's third-party administrator releasing Mr. Homrighausen to return to work, but with the restriction that he work no more than 40 hours per week. Sometime the same day, a HR representative from the employer's corporate office left Mr. Homrighausen a voice message letting him know that the employer could not accommodate his restrictions. Mr. Homrighausen returned the HR representative's call, and the representative told him the same information. On Thursday, December 21, the employer terminated Mr. Homrighausen's employment since the employer could not accommodate his work restrictions.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the employer discharged Mr. Homrighausen from employment on December 21, 2023 for a reason that does not disqualify him 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.

In this case, the employer ended Mr. Homrighausen's employment because the employer could not accommodate his no-more-than-40-hours-per week work restriction. The employer has not established misconduct on the part of Mr. Homrighausen. Mr. Homrighausen attempted to return to work under his medical provider's work restriction, but the employer would not allow him to do so. Since the employer has not established disqualifying, job-related misconduct on the part of Mr. Homrighausen, he 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).

DECISION:

The January 11, 2024 (reference 01) UI decision is REVERSED. The employer discharged Mr. Homrighausen from employment for a reason that does not disqualify him from receiving UI benefits. Mr. Homrighausen is eligible for UI benefits, as long as no other decision denies him UI benefits.



Daniel Zeno
Administrative Law Judge

February 27, 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 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.