

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

HOANG K NGUYEN
Claimant

HY-VEE INC
Employer

APPEAL 23A-UI-11219-DZ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 10/22/23
Claimant: Appellant (2)**

Iowa Code § 96.5(2)a – Discharge

STATEMENT OF THE CASE:

Hoang K. Nguyen, the claimant/appellant,¹ appealed the Iowa Workforce Development (IWD) November 20, 2023 (reference 01) unemployment insurance (UI) decision. IWD denied Ms. Nguyen REGULAR (state) UI benefits because IWD concluded the employer discharged her from work on October 24, 2023 for violating a known company rule. On December 6, 2023, the Iowa Department of Inspections, Appeals, and Licensing (DIAL), UI Appeals Bureau mailed a notice of hearing to Ms. Nguyen and the employer for a telephone hearing scheduled for December 21, 2023.

The undersigned administrative law judge held a telephone hearing on December 21, 2023. Ms. Nguyen participated in the hearing personally. The employer participated in the hearing through Kerry Sherlock, district store director and Frankie Patterson, hearing representative employed by Corporate Cost Control. The administrative law judge took official notice of the administrative record and admitted Claimant's Exhibits A – J, and Employer's Exhibit 1 as evidence.

ISSUE:

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

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: Ms. Nguyen began working for the employer on October 24, 2022. She worked as a full-time registered pharmacist. Her employment ended on October 24, 2023.

Sometime during the week of October 16-20, an employee (Employee A) made a report to their manager about Ms. Nguyen. Employee A alleged that about a month prior at a bar Ms. Nguyen told Employee A that Ms. Nguyen used "molly" at a music festival in Chicago sometime during summer 2023. Employee A also alleged that Ms. Nguyen told Employee A that Ms. Nguyen was "rolling" on something at some other time. The manager sent the report to upper

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

management and Mr. Sherlock received the report on Tuesday, October 24. Mr. Sherlock discussed the matter with the employer's human resources staff and legal staff and reviewed the employer's policy.

The employer's policy provides that the employer may discipline an employee up to, and including, terminating their employment for conduct outside of work that could impact the employee's fitness for their job. The policy prohibits possession, use, selling, transferring, or attempting to sell or transfer any prescription drugs, controlled substances or look alike substances. The policy also requires an employee to notify the employer of any prescription or over-the-counter drug use that may adversely impact the employee's ability to perform their job. Ms. Nguyen acknowledged receiving a copy of the policy on her hire date.

The employer believed Employee A's allegations because the allegation was serious and concluded that Ms. Nguyen violated the employer's policy. The employer did not drug test Ms. Nguyen. Toward the end of Ms. Nguyen's shift on October 24, Mr. Sherlock called Ms. Nguyen into his office and told her about the allegations. Ms. Nguyen denied the allegations. Ms. Nguyen takes prescription drugs and knows, from her professional training and experience, that taking molly or other controlled substances and her prescription drugs would negative impact her health. The employer terminated Ms. Nguyen's effective immediately for conduct unbecoming of an employee.

Two days after the employer ended Ms. Nguyen's employment, Employee A gave the employer a written version of their allegations. Employee A signed and dated the statement. The statement is not an affidavit and is not notarized. The written statement provides no additional detail about the allegation. The employer submitted the statement as evidence. Employee A did not testify during the hearing.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the employer discharged Ms. Nguyen from employment on October 24, 2023 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.

In this case, the evidence the employer presented – Mr. Sherlock's re-telling of Employee A's allegation and Employee A's written statement after the employer ended Ms. Nguyen's employment – does not establish disqualifying, job-related misconduct on the part of Ms. Nguyen. Ms. Nguyen denied Employee A's allegations, but the employer believed Employee A over Ms. Nguyen because Employee A's allegation was serious. But the seriousness of the allegation calls for more evidence not less. The employer has failed to establish disqualifying, job-related misconduct on the part of Ms. Nguyen. Ms. Nguyen is eligible for UI benefits.

DECISION:

The November 20, 2023 (reference 01) UI decision is REVERSED. The employer discharged Ms. Nguyen from employment on October 24, 2023 for a reason that does not disqualify her from receiving UI benefits. Ms. Nguyen is eligible for UI benefits, as long as no other decision denies her UI benefits. IWD must pay Ms. Nguyen any UI benefits she claimed and IWD withheld on this basis.



Daniel Zeno
Administrative Law Judge

December 22, 2023
Decision Dated and Mailed

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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).

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.