

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

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**SHURMEAN N CARTER**  
Claimant

**APPEAL 23A-UI-09528-LJ-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**BETTENDORF HEALTHCARE MGMT**  
Employer

**OC: 09/17/23  
Claimant: Appellant (2)**

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Iowa Code § 96.5(2)a – Discharge from Employment

**STATEMENT OF THE CASE:**

On October 6, 2023, claimant Shurmean N. Carter filed an appeal from the October 3, 2023 (reference 01) unemployment insurance decision that denied benefits based on a determination that employer Bettendorf Healthcare Management discharged her for violation of a known company rule. The parties were properly notified of the hearing. A telephonic hearing was held at 8:00 a.m. on Tuesday, October 24, 2023. Claimant Shurmean N. Carter personally participated. Employer Bettendorf Healthcare Management participated through witnesses Jim Kooken, Administrator; and James Farmer, HR Specialist. Farmer also acted as the employer's representative. Claimant's Exhibit A, pages 1 through 41 was received and admitted into the record without objection.

**ISSUE:**

Was the claimant discharged from employment for disqualifying, job-related misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for Bettendorf Healthcare Management on July 27, 2021. Most recently, she worked full-time hours as the employer's activities coordinator. Claimant's employment ended on September 13, 2023, when the employer discharged her.

The misconduct alleged centers around the resident council meeting minutes. The standard process was for the resident council to meet and for the activities assistant, Sue, to attend those meeting and take notes of any concerns. Following the resident council meeting, Sue would then meet with claimant to relay the residents' concerns. Claimant would prepare minutes from the meeting formally recording the concerns the residents had with any areas of the residence (dietary, business office, activities, nursing, etc.), and she would deliver these minutes to Kooken, who would write up grievances as appropriate. Claimant would then receive back both the minutes and the grievances: claimant would pass the grievance along to whatever area of the residence was appropriate; she also maintained a copy of the grievance and the minutes in a binder in her office. The notes that Sue originally took from the resident council meeting were not kept: those were always recycled.

On Friday, September 8, the employer first learned that claimant may have been omitting information from the resident council minutes. The employer suspended claimant pending a full investigation. The following Monday, September 11, Kooken and the employer's HR manager commenced investigatory interviews. They spoke with six residents and with Sue, the activities assistant. Sue reported receiving these concerns and passing them on to claimant. She expressed concern to Kooken that what she told claimant was not accurately reflected in the minutes claimant prepared. The residents all reported attending recent resident council meetings and complaining that the woman who worked in the business office was rude and unkind. The residents expressed that the business office employee made them feel badly about requesting to withdraw their own funds. Additionally, the president of the resident council expressed that she was experiencing conflict with claimant, and that claimant was intentionally calling her by the incorrect version of her name. (The example used in the hearing: calling her "Emma" when her name was "Emmie.")

Based on the findings of the investigation, the employer determined claimant should be discharged. Claimant was on a final written warning at the time for an issue unrelated to the resident council or trustworthiness. The employer believed discharge was appropriate because claimant's behavior reached the level of abuse and the residents were fearful of her and of retaliation by her.

#### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason. Benefits are allowed.

Iowa Code section 96.5(2)(a) and (d) provide:

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 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 even 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.

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982).

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). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). The focus is on deliberate, intentional, or culpable acts by the employee.

The Iowa Court of Appeals found substantial evidence of misconduct in testimony that the claimant worked slower than he was capable of working and would temporarily and briefly improve following oral reprimands. *Sellers v. Emp't Appeal Bd.*, 531 N.W.2d 645 (Iowa Ct. App. 1995). When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988).

Iowa Admin. Code r. 871-24.32(4) provides:

(4) Report required. The claimant's statement and the employer's statement must give detailed facts as to the specific reason for the claimant's discharge. 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. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

In this case, the employer alleges claimant deliberately omitted residents' concerns from the resident council meeting minutes. Even if Sue and numerous residents told Kooken these concerns were raised at the resident council meetings – and even if these concerns were, in fact, raised at those meetings – that does not prove that claimant knew about the concerns. While the employer could not reasonably produce the resident council members as witnesses for the hearing, it could have presented Sue. The Iowa Supreme Court has ruled that if a party has the power to produce more explicit and direct evidence than it chooses to present, the administrative law judge may infer that evidence not presented would reveal deficiencies in the party's case. *Crosser v. Iowa Dep't of Pub. Safety*, 240 N.W.2d 682 (Iowa 1976). In light of *Crosser*, I infer that Sue would not have provided reliable testimony had she appeared and testified.

Claimant denies she knew about any resident council concerns about the business office, which explains why she did not include them in her minutes. She also maintains she recorded resident council complaints about all departments of the residence, including activities, which undercuts the employer's theory that she would omit the concerns about the business office to protect her friend. If claimant would omit concerns to protect anyone, would it not be herself? The evidence in the record simply fails to establish claimant was discharged for disqualifying misconduct. Benefits are withheld.

**DECISION:**

The October 3, 2023 (reference 01) unemployment insurance decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.



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Elizabeth A. Johnson  
Administrative Law Judge

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October 25, 2023  
Decision Dated and Mailed

LJ/jkb

**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:

**Iowa Employment Appeal Board  
6200 Park Avenue 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> 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:

**Iowa Employment Appeal Board  
6200 Park Avenue Suite 100  
Des Moines, Iowa 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.