

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

---

**JOSHUA J WILLEY**  
Claimant

**CUSTOM-PAK INC – LP2**  
Employer

**APPEAL 24A-UI-02221-LJ-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 01/28/24  
Claimant: Appellant (2)**

---

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

**STATEMENT OF THE CASE:**

On February 24, 2024, claimant Joshua J. Willey filed an appeal from the February 14, 2024 (reference 01) unemployment insurance decision that denied benefits, determining claimant was discharged for engaging in conduct not in the best interest of the employer. The Unemployment Insurance Appeals Bureau mailed notice of the hearing on March 1, 2024. Administrative Law Judge Elizabeth A. Johnson held a telephonic hearing at 11:00 a.m. on Thursday, March 21, 2024. Claimant Joshua J. Willey participated. Employer Custom-Pak Inc. participated through Ron Zimmer, General Manager for DeWitt Operations; Aleigha Robinson and Vicki Rixen were sworn in but did not testify. No exhibits were offered or admitted. The administrative law judge took official notice of the administrative record.

**ISSUE:**

Whether the employer discharged claimant from employment for disqualifying misconduct.

**FINDINGS OF FACT:**

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

Claimant began working for Custom-Pak Inc. on June 15, 2020. Most recently, claimant worked full-time hours as a manufacturing team member and process tech. Claimant's employment ended on January 26, 2024, when the employer discharged him after determining that he had a "non-coachable" attitude.

Claimant met with Ron Zimmer, Aleigha Robinson, Vicki Rixen, his coach, and his facilitator on January 8, after serving a suspension due to job performance issues. As part of claimant's suspension, he had to write two "letters of commitment," explaining what happened that led to him being suspended, why it happened, and demonstrating his commitment that it would not happen again. Claimant was required to write two letters, as he held two roles at the company: a manufacturing team member position and a process tech "skill premium." Several people within management did not feel claimant's letters of commitment demonstrated a sufficient level of ownership for what happened and a true promise that he was dedicated to performing his job. Additionally, claimant attributed the issue leading to his suspension to a lack of time and a lack of knowledge, both factors that the employer did not believe were the problem at hand. Despite

these concerns, the employer wanted to extend claimant an opportunity to prove his commitment to his job and keep its production line together. For these reasons, the employer allowed claimant to return after the suspension.

On January 22, 2024, one of claimant's coworkers reported to management that they heard claimant comment he "fucking hated his job." Once Zimmer learned about this, he spoke to claimant's leadership on the production line, who had already expressed hesitation about allowing claimant to return to work after the suspension. They agreed with Zimmer that claimant should be discharged, as he was not coachable and committed to his job.

Claimant admits that he was frustrated with his work environment and he made the comment his coworker overheard. He had heard several other employees talking about how they wanted to get him fired, because he had taken a position on first shift and they did not feel he was entitled to have that position. Claimant also described his frustration with management on the production floor. Claimant was working on a two-person machine with another employee, but the machine was not running well and they needed a helper. The person assigned to help them was wandering around, talking to coworkers, and not helping them as directed. When another employee had voluntarily come over to help them with the work, a member of management sent that employee back to their work area but did not direct the original person assigned to help to come over and help.

#### **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:

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). Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990). 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.

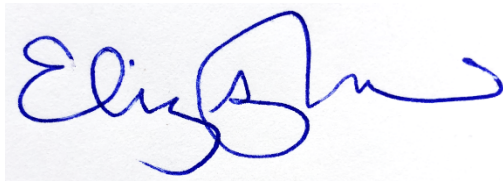
Every employer is entitled to expect civility and decency from its employees, and an employee's "use of profanity or offensive language in a confrontational, disrespectful, or name-calling context may be recognized as misconduct." *Henecke v. Iowa Dep't of Job Serv.*, 533 N.W.2d 573, 576 (Iowa App. 1995) (internal citation omitted). However, the use of profanity or offensive language is not automatically disqualifying for unemployment insurance benefits purposes. The "question of whether the use of improper language in the workplace is misconduct is nearly always a fact question... [and] must be considered with other relevant factors..." *Myers v. Employment Appeal Board*, 462 N.W.2d 734, 738 (Iowa App. 1990).

Multiple members of the management team had doubts about claimant's attitude and dedication to his work. Despite these doubts, the employer chose to give claimant an opportunity to return. Claimant then made an ill-advised profane comment out of frustration, which was overheard by a coworker and reported to management. Zimmer and the employer's management team used this as an opportunity to revisit their decision to retain claimant after his suspension, and they discharged him. The question presented on appeal is not whether the employer has the right to

discharge this employee, but whether the claimant discharge is disqualifying under Iowa Employment Security Law. While management's decision to terminate the claimant may have been a sound business decision, for the above stated reasons, the employer has not proven that the claimant's discharge was due to disqualifying, job-related misconduct. Accordingly, benefits are allowed provided the claimant is otherwise eligible.

**DECISION:**

The February 14, 2024 (reference 01) unemployment insurance decision is reversed. The employer discharged claimant from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.



---

Elizabeth A. Johnson  
Administrative Law Judge

March 25, 2024  
Decision Dated and Mailed

lj/scn

**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.