

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

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**KEVIN J KONVALINKA**  
Claimant

**JOHN DEERE COMPANY**  
Employer

**APPEAL 24A-UI-03139-DZ-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 05/14/23  
Claimant: Respondent (1)**

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Iowa Code § 96.5(2)a – Discharge

**STATEMENT OF THE CASE:**

John Deere Company, the employer/appellant,<sup>1</sup> appealed the Iowa Workforce Development (IWD) March 11, 2024 (reference 03) unemployment insurance (UI) decision. IWD found Mr. Konvalinka eligible for REGULAR (state) UI benefits because IWD concluded the employer dismissed him from employment on January 24, 2024 for a reason that did not disqualify him from receiving UI benefits. On March 22, 2024, the Iowa Department of Inspections, Appeals, and Licensing (DIAL), UI Appeals Bureau mailed a notice of hearing to the employer and Mr. Konvalinka for a telephone hearing scheduled for April 11, 2024.

The undersigned administrative law judge held a telephone hearing on April 11, 2024. The employer participated in the hearing through Megan Luke, employee relations manager, Matthew Sillbaugh, experience shop manager and former environmental health and safety manager, and John Soete, Equifax hearing representative. Mr. Konvalinka participated in the hearing personally. The administrative law judge took official notice of the administrative record and admitted Claimant's Exhibit A as evidence.

**ISSUES:**

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

Did IWD overpay Mr. Konvalinka UI benefits?

If so, should he repay the benefits?

**FINDINGS OF FACT:**

The decision in this case rests, at least in part, on the credibility of the witnesses. It is the duty of the administrative law judge as the trier of fact, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue.<sup>2</sup> The administrative law judge may believe all, part or none of any witness's testimony.<sup>3</sup> In assessing the credibility of witnesses, the

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<sup>1</sup> Appellant is the person or employer who appealed.

<sup>2</sup> *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007).

<sup>3</sup> *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996).

administrative law judge should consider the evidence using his or her own observations, common sense and experience.<sup>4</sup> In determining the facts, and deciding what testimony to believe, the administrative law judge 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 conduct, age, intelligence, memory and knowledge of the facts; the witness's interest in the trial, and the witness's motive, candor, bias and prejudice.<sup>5</sup>

The following findings of fact show how the administrative law judge has resolved the disputed factual issues in this case. The administrative law judge assessed the credibility of the witnesses, considered the applicable factors listed above, and used his own common sense and experience.

Having reviewed the evidence in the record, the administrative law judge finds: Mr. Konvalinka began working for the employer in November 2013. He worked as a full-time welder. His employment ended on January 24, 2024.

On January 23, 2024, Mr. Konvalinka's supervisor reported to Mr. Sillbaugh that Mr. Konvalinka had been acting outside of the norm for the past few shifts. The supervisor reported that Mr. Konvalinka had involuntary movements, repeatedly picked up items and put them back down, and the supervisor had to repeatedly ask Mr. Konvalinka to remain on task. The supervisor reported that the supervisor observed this behavior personally, and a team lead also reported this behavior to the supervisor. Another supervisor also reported similar observations to Mr. Sillbaugh.

The employer's policy prohibits drug use at work or being under the influence of drugs at work. The policy further provides that if the employer reasonably suspects an employee is under the influence of drugs and/or alcohol, the employer may require the employee to take a drug test. The policy further provides that an employee who refuses to take a drug test based on the employer's reasonable suspicion is subject to the employer terminating their employment. Mr. Konvalinka acknowledged receiving a copy of the policy most recently in July 2023.

Mr. Sillbaugh called Mr. Konvalinka into the office. Ms. Luke also participated in the meeting. Mr. Sillbaugh and Ms. Luke told Mr. Konvalinka that other employees reported his behavior as suspicious. Mr. Sillbaugh and Ms. Luke observed that Mr. Konvalinka was fidgety and quickly switched from clam to upset/agitated. Mr. Sillbaugh also observed that Mr. Konvalinka had involuntary movements. Based on the report from Mr. Konvalinka's supervisor and their own observations, Mr. Sillbaugh and Ms. Luke told Mr. Konvalinka that they suspected he was under the influence of something. They explained to Mr. Konvalinka that he could either take a drug test, or if he refused the employer would terminate his employment.

Mr. Konvalinka denied that he was under the influence of drugs or alcohol. He also told Mr. Sillbaugh and Ms. Luke that he was in pain. Mr. Konvalinka did not provide details about his pain. Eventually, Mr. Konvalinka agreed to take the drug test. The employer paid for a taxi to bring Mr. Konvalinka from work to the Greene County Medical Clinic for drug testing.

When Mr. Konvalinka arrived at the clinic, he checked in and clinic staff told the employer that Mr. Konvalinka had arrived. Mr. Konvalinka checked in at about 12:15 p.m. At about 12:30 p.m., Mr. Konvalinka took a breath test and tested negative for alcohol. Clinic staff then asked Mr. Konvalinka to take a urine test. Mr. Konvalinka got on his phone for about twenty minutes.

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<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

Mr. Konvalinka then tried to urinate but was unable to do so. Mr. Konvalinka asked for water and clinic staff gave him a small amount of water. Clinic staff told Mr. Konvalinka that he had 8 minutes left to provide a urine sample. The clinic requires drug testing patients to provide a urine sample within one hour of check-in. Mr. Konvalinka still could not urinate.

Mr. Konvalinka texted Mr. Sillbaugh and asked if he could take a blood test or get an extension for the urine test. Mr. Sillbaugh responded that he would look into it. Mr. Konvalinka then asked clinic staff if he could take a blood test or get an extension for the urine test. Clinic staff told Mr. Konvalinka that they do not offer blood tests for drug testing, and they could not give him an extension because they had other patients to get to. Mr. Konvalinka explained that he has a medical condition that made urinating difficult for him. Clinic staff told Mr. Konvalinka that he still could not get an extension. Mr. Konvalinka still could not urinate.

At about 1:20 p.m., a nurse completed a form, handed it to Mr. Konvalinka and told him that he could leave. The nurse wrote "Shy bladder at 1255 – Refusal to test."<sup>6</sup> The taxi took Mr. Konvalinka home. Clinic staff relayed to the employer that Mr. Konvalinka refused to take the urine drug test and left.

The next day, the employer contacted Mr. Konvalin and terminated his employment for refusing to take a drug test. Mr. Konvalinka explained that he had a medical condition that made it difficult for him to urinate. The employer told Mr. Konvalinka that his employment was over.

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

For the reasons that follow, the administrative law judge concludes the employer discharged Mr. Konvalinka from employment on January 24, 2024 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.

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<sup>6</sup> Claimant's Exhibit A.

The employer has the burden of proof in establishing disqualifying job misconduct.<sup>7</sup> 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.<sup>8</sup> Misconduct must be “substantial” to warrant a denial of job insurance benefits.<sup>9</sup>

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 has failed to establish misconduct on the part of Mr. Konvalinka. Mr. Konvalinka’s inability to urinate was not volitional. The form from the clinic nurse supports this proposition in that the nurse wrote “shy bladder.” Mr. Konvalinka credibly described what happened at the clinic – he left when the nurse handed him the form and told him he could leave. This is not a refusal to drug test. Based on the evidence in this case, the employer has failed to establish that what Mr. Konvalinka did was disqualifying, job-related misconduct. Mr. Konvalinka is eligible for UI benefits.

Since Mr. Konvalinka is eligible for REGULAR (state) UI benefits per this decision, the issues of overpayment and repayment are moot. An issue being moot means there is nothing left to decide.<sup>10</sup>

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<sup>7</sup> *Cosper v. Iowa Dep’t of Job Serv.*, 321 N.W.2d 6 (Iowa 1982).

<sup>8</sup> *Infante v. Iowa Dep’t of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984).

<sup>9</sup> *Newman v. Iowa Dep’t of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984).

<sup>10</sup> *Iowa Bankers Ass’n v. Iowa Credit Union Dep’t*, 335 N.W.2d 439, 442 (Iowa 1983).

**DECISION:**

The March 11, 2024, (reference 03) UI decision is AFFIRMED. The employer discharged Mr. Konvalinka from employment on January 24, 2024 for a reason that does not disqualify him from receiving UI benefits. Mr. Konvalinka is eligible for UI benefits, as long as no other decision denies him UI benefits.



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Daniel Zeno  
Administrative Law Judge

April 12, 2024  
Decision Dated and Mailed

DZ/jkb

**APPEAL RIGHTS.** If you disagree with this 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, 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:

**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 adquiera 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.