

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

**KATHRYN EILERS**

Claimant

**APPEAL 23A-UI-08324-LJ-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**THE UNIVERSITY OF IOWA**

Employer

**OC: 07/30/23**

**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

On August 29, 2023, claimant Kathryn Eilers filed an appeal from the August 23, 2023 (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified of the hearing. A telephonic hearing was held at 10:00 a.m. on Thursday, September 14, 2023. Claimant Kathryn Eilers personally participated. Employer The University of Iowa participated through witnesses Scott Coons and Amie Stewart; Coons acted as the employer's representative. Claimant's Exhibit A and Employer's Exhibits 1, 2, 3, 4, and 5 were received and admitted into the record without objection.

**ISSUE:**

Was the claimant discharged 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 this employer on December 16, 2019. Most recently, she worked full-time hours as a dental assistant 2. Claimant's employment ended on August 3, 2023, when she was discharged from employment.

On July 17, 2023, claimant was scheduled to assist in oral surgery. Claimant clocked in that morning at the same time as nurse manager Elizabeth Brau, who did not give her any specific directions at the time they were clocking in. Claimant then looked at the written oral surgery schedule and did not see her name written next to any doctor's name or any surgery room. Based on this, she decided to go back over to the lab and work on her fluoride cases. She did not check with her supervisor, Dr. David Gratton; administrator, Ann Huss; or Brau before going to the lab.

Claimant had been disciplined on multiple prior occasions. On October 10, 2022, claimant used the improper method of imaging for a liver transplant patient because it was late in the day and she was in a hurry to leave work and tend to employee carpool responsibilities. Claimant could have asked a doctor or resident if the alternate imaging method were acceptable, and she admits both a doctor and resident were available, but she did not ask permission. Claimant

could have asked a colleague to assist her so she could leave work on time, but she assumed no one would have helped her and so she took the shortcut. Claimant received a third written reprimand for this issue on October 31, 2022. (Exhibit 5)

On August 24, 2022, claimant inappropriately shared workplace information with a patient while performing care. The claimant had asked her how her day was going, and in response, the claimant vented to the patient about what she perceived were inequities in her work environment. That same day, claimant loaded a syringe without wearing medical gloves and handled clean instruments without wearing gloves. On August 31, claimant took off her medical gloves and handled a product during a procedure, in violation of protocol. Claimant received a second written reprimand for these issues on September 13, 2022. (Exhibit 4)

On July 29, 2022, claimant left the clinic in the middle of assisting a resident with a surgical extraction procedure. (Exhibit 3) She was experiencing severe anxiety, due to stress and her work environment, and she asked two people to step in and assist for her when she left. (Claimant testimony.) Claimant received a written warning for this incident on August 10, 2022. (Exhibit 3)

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

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment due to disqualifying misconduct. Benefits are withheld.

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...

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).

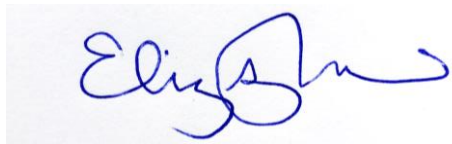
The Iowa Court of Appeals found substantial evidence of misconduct in testimony that the claimant worked slower than he was capable of working and would temporarily and briefly

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).

The employer has presented credible evidence establishing claimant's pattern of attempting to direct own work rather than defer to her superiors. Time after time, claimant was aware that the employer's policy's or expectations dictated one route, but she determined another route was more suitable. Her reason for doing so varied, but her actions consistently demonstrated a disregard for authority at work and a tendency to direct her own actions rather than defer to supervisors and policies. The final incident on July 17 clearly demonstrated this disregard. Claimant was assigned to work in oral surgery for an entire day. Rather than consult with anyone in authority, she reviewed the schedule that no one had told her to consult for direction and decided that the fact that her name was not on said schedule meant she could return to her work in the lab and someone would come find her if they needed her. Claimant was never directed to review that schedule for her specific work assignment; she was never told that the absence of her name on that schedule meant there was no work in oral surgery for her; she wrote her own rules for that day so she could do what she wanted to do. Claimant had been warned multiple times in the past and was aware her job was in jeopardy due to this behavior. The evidence in the record establishes claimant was discharged for disqualifying, job-related misconduct. Benefits are withheld.

**DECISION:**

The August 23, 2023 (reference 01) unemployment insurance decision is affirmed. Claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.



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Elizabeth A. Johnson  
Administrative Law Judge

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September 21, 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:

**Employment Appeal Board  
4<sup>th</sup> Floor – Lucas Building  
Des Moines, Iowa 50319  
Fax: (515)281-7191  
Online: [eab.iowa.gov](http://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  
4th Floor – Lucas Building  
Des Moines, Iowa 50319  
Fax: (515)281-7191  
En línea: [eab.iowa.gov](http://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.