

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

CLAIMANT

APPEAL 23A-UI-06204-DZ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

EMPLOYER

**OC: 05/21/23
Claimant: Appellant (1)**

Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant/appellant,¹ filed an appeal from the Iowa Workforce Development (IWD) June 12, 2023 (reference 01) unemployment insurance (UI) decision. The decision denied the claimant REGULAR (state) UI benefits because IWD concluded that the employer discharged the claimant from work on April 17, 2023 for violation of a known company rule. On June 22, 2023, the Iowa Department of Inspections, Appeals, and Licensing, UI Appeals Bureau mailed notices of hearing to the claimant and the employer for a hearing scheduled for July 11, 2023.

The undersigned administrative law judge held a telephone hearing on July 11, 2023. The claimant participated personally. The employer participated through its owner.

ISSUE:

Did the employer discharge the claimant from employment for disqualifying, job-related misconduct?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: The claimant began working for the employer in 2018 as a full-time driver. The claimant's employment ended on April 17, 2023.

The employer's policy prohibits drug use and provides that employees who are in an accident are subject to drug testing. The policy further provides that employees are to report accidents to police and/or management. The claimant acknowledged receiving a copy of the policy.

On April 16, 2023, the claimant fell asleep while driving the employer's truck and got into an accident. The claimant contacted a tow truck, but the claimant did not contact the employer or police. Another employee reported the accident to the employer. The owner called the claimant and asked about the accident. The claimant stated that the claimant fell asleep and got into an accident, but the accident was not a big deal. About fifteen minutes later, another employee

¹ Claimant is the person who filed the UI claim with IWD. Appellant is the person or employer who filed the appeal.

sent the owner a picture of the accident showing the truck had rolled over and it was tens of feet off the road. Two tow trucks were required to return the employer's truck to the road.

The employer had another employee (Employee A) drive the claimant from the accident to a drug testing site to be drug tested per United States Department of Transportation (US DOT) rules. On the drive, the claimant told Employee A that the claimant would not pass a drug test and asked Employee A to stop at a store so the claimant could purchase products to help the claimant get around the drug test. The employee did not do so and reported the claimant's statement and request to the employer. The claimant also sent a text message to the employer's office manager asking if there is anything the claimant could do to get around the drug test because the claimant could not pass it.

As of the next day, the employer had not yet received the results of the claimant's drug test. The employer terminated the claimant's employment still for attempting to undermine the drug test through the claimant's request to Employee A and the claimant's text message to the office manager, and because of the claimant's statements implying that the claimant was under the influence of drugs. The owner notified the claimant of the termination via a voice message.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the undersigned concludes the employer discharged the claimant from employment for job-related misconduct.

Iowa Code section 96.5(2)(a) and (d)(5) 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. Misconduct by an individual includes but is not limited to all of the following:

...

(5) Reporting to work under the influence of alcohol, illegal or nonprescribed prescription drugs, or an impairing substance in an off-label manner, or a combination of such substances, on the employer's premises in violation of the

employer's employment policies, unless the individual is compelled to work by the employer outside of scheduled or on-call working hours.

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 employer terminated the claimant's employment for essentially admitting to drug use while at work. The claimant told two employees – Employee A and the office manager – that the claimant could not pass a drug test and the claimant attempted to get around the drug test. Even without the drug test results, this admission by the claimant is enough to establish misconduct. Since the employer has established disqualifying, job-related misconduct, UI benefits are denied.

DECISION:

The June 12, 2023 (reference 01) UI decision is AFFIRMED. The employer discharged the claimant from employment for job-related misconduct. Benefits are denied until the claimant has worked in and been paid wages for insured work equal to ten times the claimant's weekly UI benefit amount, as long as no other decision denies the claimant UI benefits.



Daniel Zeno
Administrative Law Judge

July 17, 2023
Decision Dated and Mailed

scn

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
4th Floor – Lucas Building
Des Moines, Iowa 50319
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
4th Floor – Lucas Building
Des Moines, Iowa 50319
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.