

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

ZACHARY KERN
Claimant

RICKS TOWING CO
Employer

APPEAL 24A-UI-03596-DZ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 03/10/24
Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

Zachery Kern, the claimant/appellant,¹ appealed the Iowa Workforce Development (IWD) March 29, 2024 (reference 01) unemployment insurance (UI) decision. IWD denied Mr. Kern REGULAR (state) UI benefits because IWD concluded the employer discharged him from employment on February 29, 2024 for conduct not in the best interest of the employer. On April 9, 2024, the Iowa Department of Inspections, Appeals, and Licensing (DIAL), UI Appeals Bureau mailed a notice of hearing to Mr. Kern and the employer for a telephone hearing scheduled for April 25, 2024.

The administrative law judge held a telephone hearing on April 25, 2024. Mr. Kern participated in the hearing personally. The employer participated in the hearing through Catch Atcheson, office manager, Bill Atcheson, owner and Bry Williams, dispatcher. The administrative law judge admitted Employer's Exhibits 1-5, and 7 as evidence. The administrative law judge did not admit Employer's Exhibit 6 because the employer withdrew its offering of this exhibit.

The administrative law judge concludes Mr. Kern is not eligible for UI benefits because the employer established that he engaged in disqualifying, job-related misconduct.

ISSUE:

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

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: Mr. Kern began working for the employer in July 2013. He worked as a full-time driver. His employment ended on February 29, 2024.

¹ Claimant is the person who applied for UI benefits. Appellant is the person or employer who appealed.

On February 20, a vehicle owner whose vehicle had been at the employer's lot reported to the employer that someone had taken tools from their vehicle. The employer asked Mr. Kern and other employees if they took tools from the vehicle. Mr. Kern denied doing so.

The employer reviewed its video footage to see if it could figure out who took the tools. While reviewing the footage, the employer saw Mr. Kern's personal vehicle parked at the employer's lot on February 14. The employer also saw Mr. Kern exit his vehicle empty-handed, enter a vehicle on the employer's lot, then put items into his vehicle. Previously, on a case-by-case basis, the employer had authorized employees, including Mr. Kern, to take items from vehicles. The employer had not given Mr. Kern permission to take items from this vehicle.

On February 28, the employer asked Mr. Kern if he took tools from a vehicle on the employer's lot. Mr. Kern denied doing so. The employer told Mr. Kern that its video footage showed him entering a vehicle on the employer's lot empty-handed then putting items into his personal vehicle. Mr. Kern then admitted that he took tools from the vehicle in the employer's lot. The employer suspended Mr. Kern pending further investigation.

The employer asked Mr. Kern to return the tools he took. The next day, Mr. Kern did so. Mr. Kern admitted that he should not have taken the tools. The employer terminated Mr. Kern's employment for theft.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the employer discharged Mr. Kern from employment on February 29, 2024 for disqualifying, job-related misconduct so Mr. Kern is not eligible for 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. Misconduct by an individual includes but is not limited to all of the following:

...

(13) Theft of an employer or coworker's funds or property

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

Theft is misconduct under the explicit statutory definition of misconduct. In addition, the Iowa Supreme Court has found a single attempted theft to be misconduct as a matter of law.⁵ Even the theft of a small value item can be misconduct. The Iowa Court of Appeals has found an employee who took a wasted \$10.00 container of soup from a dumpster was disqualified for misconduct.

In this case, the employer has established that Mr. Kern stole from the employer by taking tools from a vehicle on the employer's lot. This is misconduct. Since the employer has established disqualifying, job-related misconduct on the part of Mr. Kern, he is not eligible for UI benefits.

DECISION:

The March 29, 2024 (reference 01) UI decision is AFFIRMED. The employer discharged Mr. Kern from employment on February 29, 2024 for disqualifying, job-related misconduct. Mr. Kern is not eligible for UI benefits until he has worked in and been paid wages for insured work equal to ten times his weekly UI benefit amount, as long as no other decision denies him UI benefits.



Daniel Zeno
Administrative Law Judge

April 26, 2024
Decision Dated and Mailed

DZ/jkb

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).

⁵ *Ringland Johnson Inc. v. Employment Appeal Board*, 585 N.W.2d 269 (Iowa 1998).

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
6200 Park Avenue Suite 100
Des Moines IA 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 IA 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.