

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

**NIA S JENKINS**  
Claimant

**PREMIER ESTATES 511 LLC**  
Employer

**APPEAL 24A-UI-09511-ED-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 04/07/24  
Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

Claimant/appellant, Nia Jenkins, filed an appeal from a decision of a representative dated November 6, 2024, (reference 02) that held claimant was ineligible for unemployment insurance benefits after a separation from employment. After due notice, a telephonic hearing was scheduled for and held on November 26, 2024. Claimant, Nia Jenkins, participated personally. Witness, Jada Meier, participated on behalf of the claimant. Employer, Premier Estates, participated by director of nursing, Cindy Hambly. No exhibits were offered or admitted into the record. The administrative law judge took official notice of the administrative record.

**ISSUE:**

Was the claimant discharged for disqualifying job-related misconduct?

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Ms. Jenkins began working for this employer on April 10, 2024 as a part-time CNA. Ms. Jenkin's immediate supervisor was Cindy Hambling or the nurse on the floor. Ms. Jenkins' last day physically working for the employer was October 17, 2024. Ms. Jenkins was discharged from employment on October 17, 2024.

Ms. Jenkins was discharged for violation of the employer's code of conduct. Ms. Jenkins had received the employer's code of conduct on April 10, 2024 in her handbook.

On October 11, 2024, the volunteer state ombudsman entered the facility to speak to several residents. After speaking with the residents, the ombudsman met with Ms. Hambly and shared that more than one resident in the facility said Ms. Jenkins was disrespectful and unkind to the residents.

On October 14, 2024, Ms. Hambly was asking staff to pick up extra hours. The employee Ms. Hambly had been speaking to told Ms. Hambly that she would not pick up extra hours if the shift was with Ms. Jenkins because Ms. Jenkins had such a bad attitude.

Ms. Hambly met with human resources and it was determined that the claimant would be discharged from employment on October 17, 2024.

Ms. Jenkins had received previous disciplinary warning as follows:

On June 10, 2024, Ms. Jenkins was given a written teachable moment.

On September 16, 2024 Ms. Jenkins received two grievance reports incidents reported by staff. After reviewing the two grievance reports, Ms. Jenkins was warned that additional violations may result in termination of employment.

On September 16, 2024, the assistant director of nursing, Jennifer Johnson, stated that on September 11, 2024 a co-worker called in to the facility's phone. Ms. Jenkins answered the phone and threatened to beat up the caller.

The second grievance that day was brought forward by Jada Meier. Ms. Meier reported Ms. Jenkins came out to her car, pounded on the car window and threatened to kill her. This was because Ms. Jenkins was upset that Ms. Meier had told another staff information Ms. Jenkins had told her. Ms. Jenkins and Ms. Meier were both interviewed. Both were informed that if altercations continued, corrective action would continue.

On October 9, 2024, Ms. Hambly received a text from Ms. Jenkins's direct nurse supervisor on the floor. The text stated that something needed to be done with Ms. Jenkins because she had been very disrespectful towards her. When the supervising nurse told Ms. Jenkins that residents were eating and needed someone to watch them, Ms. Jenkins began to yell. The supervising nurse texted Ms. Hambly that she couldn't work with Ms. Jenkins any longer.

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

For the reasons that follow, the administrative law judge concludes the claimant's separation disqualified her from receipt of benefits.

Iowa Code section 96.5(2)a and d provide:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 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:

- (1) Material falsification of the individual's employment application.
- (2) Knowing violation of a reasonable and uniformly enforced rule of an employer.
- (3) Intentional damage of an employer's property.
- (4) Consumption of alcohol, illegal or nonprescribed prescription drugs, or an impairing substance in a manner not directed by the manufacturer or a combination of such substances, on the employer's premises in violation of the employer's employment policies.
- (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.
- (6) Conduct that substantially and unjustifiably endangers the personal safety of coworkers or the general public.
- (7) Incarceration for an act for which one could reasonably expect to be incarcerated that results in missing work.
- (8) Incarceration as a result of a misdemeanor or felony conviction by a court of competent jurisdiction.
- (9) Excessive unexcused tardiness or absenteeism.
- (10) Falsification of any work-related report, task, or job that could expose the employer or coworkers to legal liability or sanction for violation of health or safety laws.
- (11) Failure to maintain any licenses, registration, or certification that is reasonably required by the employer or by law, or that is a functional requirement to perform the individual's regular job duties, unless the failure is not within the control of the individual.
- (12) Conduct that is libelous or slanderous toward an employer or an employee of the employer if such conduct is not protected under state or federal law.
- (13) Theft of an employer or coworker's funds or property.
- (14) Intentional misrepresentation of time worked or work carried out that results in the individual receiving unearned wages or unearned benefits.

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 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 in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. Arndt v. City of LeClaire, 728 N.W.2d 389, 394–95 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. State v. Holtz, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. Id. In determining the facts, and deciding what testimony to believe, the fact finder 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 appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. Id.

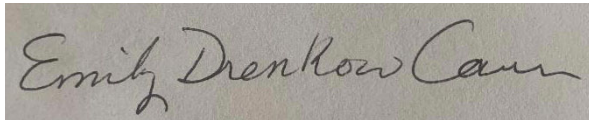
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After assessing the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge finds the employer's version of events to be more credible than the claimant's recollection of those events.

Ms. Jenkins clearly made inappropriate comments ranging from unkind to yelling and threats of violence. She did not deny the behavior but had provided excuses about why she demonstrated the behavior. This made her assertions regarding the inappropriate comments less credible. The administrative law judge concludes that claimant engaged in disqualifying misconduct when she intentionally engaged in conduct that other employees and residents found to be harassing in nature after having been warned about such conduct recently. Claimant had been warned that he was to avoid the same conduct and that any future similar conduct would result in his discharge. Despite this warning, Ms Jenkins again engaged in inappropriate behavior that resulted in residents reaching out to their volunteer ombudsman.

**DECISION:**

The November 6, 2024 (reference 02) unemployment insurance decision is affirmed. Claimant was discharged from employment for 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

A handwritten signature in black ink on a light-colored background. The signature reads "Emily Drenkow Carr" in a cursive script.

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Emily Drenkow Carr  
Administrative Law Judge

December 2, 2024  
Decision Dated and Mailed

ed/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](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:

**Iowa Employment Appeal Board  
6200 Park Avenue, Suite 100  
Des Moines, Iowa 50321  
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.