

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

**VANESSA J CALDERON**  
Claimant

**APPEAL 24A-UI-03998-DZ-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**REM IOWA COMMUNITY SERVICES INC**  
Employer

**OC: 03/17/24**  
**Claimant: Appellant (2)**

Iowa Code § 96.5(2)a – Discharge

**STATEMENT OF THE CASE:**

Vanessa J. Calderon, the claimant/appellant,<sup>1</sup> appealed the Iowa Workforce Development (IWD) April 18, 2024 (reference 01) unemployment insurance (UI) decision. IWD denied Ms. Calderon REGULAR (state) UI benefits because IWD concluded the employer discharged her from employment on March 15, 2024 for conduct not in the best interest of the employer. On April 24, 2024, the Iowa Department of Inspections, Appeals, and Licensing (DIAL), UI Appeals Bureau mailed a notice of hearing to Ms. Calderon and the employer for a telephone hearing scheduled for May 7, 2024.

The administrative law judge held a telephone hearing on May 7, 2024. Ms. Calderon participated in the hearing personally. The employer participated in the hearing through Jenna Wenzel, program director, and Toni McColl, Equifax hearing representative. The administrative law judge admitted Employer's Exhibit 1 as evidence and took official notice of the following cases in Iowa Courts Online: State of Iowa vs Vanessa Janay Calderon, SMCR 084 501 (Clinton), and State of Iowa vs Vanessa Janay Calderon, SRCR 129271 (Dubuque).

The administrative law judge concludes Ms. Calderon is eligible for UI benefits because the employer has not established that it ended her employment for disqualifying, job-related misconduct.

**ISSUE:**

Did the employer discharge Ms. Calderon from employment for disqualifying, job-related misconduct?

**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,

<sup>1</sup> Claimant is the person who applied for UI benefits. 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).

part or none of any witness's testimony.<sup>3</sup> In assessing the credibility of witnesses, the 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: Ms. Calderon began working for the employer in May 2015. She worked as a full-time direct support professional. Her employment ended on April 26, 2024.

On March 15, Ms. Wenzell learned, via social media, that Ms. Calderon had been arrested and charged with theft. Ms. Wenzell called Ms. Calderon. Unknown to Ms. Wenzell, Ms. Calderon had just been bailed out. Ms. Calderon answered and the two spoke. Ms. Calderon admitted that she had been arrested, stated that she was fighting the charges, and she had a March 19 court date. Ms. Wenzell told Ms. Calderon that she was suspended pending a new background check by the employer after Ms. Calderon's court process ended. The employer had run a background check on Ms. Calderon on, or about, her hire date. On March 21, Ms. Calderon told Ms. Wenzell that she had a new court date of April 4.

On April 4, Ms. Calderon gave Ms. Wenzell paperwork showing the court entered a deferred judgment on five counts of theft. At Ms. Wenzell's request, Ms. Calderon completed new background paperwork. The employer ran a new background check on Ms. Calderon. The theft charges did not show up. The employer ran another background check on Ms. Calderon a few days later. The theft charges did not show up. The employer checked Iowa Courts Online and saw the theft charges and the deferred judgment.

While reviewing Iowa Courts Online, the employer also saw that Ms. Calderon had been convicted of a criminal offense in 2018. The employer's policy provides that employees should report all convictions to their supervisor immediately. Ms. Calderon acknowledged receiving a copy of the policy. Ms. Calderon reported her 2018 conviction to her then-supervisor who told Ms. Calderon that it was okay because the conviction was related to outside of work activity. The supervisor did not make a record of Ms. Calderon's report. Since the employer had no record of Ms. Calderon reporting her 2018 conviction, the employer concluded Ms. Calderon violated its policy by not reporting the conviction. So, on April 26, the employer terminated Ms. Calderon's employment.

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

For the reasons that follow, the administrative law judge concludes the employer discharged Ms. Calderon from employment on April 26, 2024 for a reason that does not disqualify her from receiving UI benefits.

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

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

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

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.

The employer has the burden of proof in establishing disqualifying job misconduct.<sup>6</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>7</sup> Misconduct must be "substantial" to warrant a denial of job insurance benefits.<sup>8</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, Ms. Calderon reported her 2018 conviction to her supervisor, per the employer's policy. The employer's lack of documentation of this does not mean Ms. Calderon did not report the incident. It simply means the employer doesn't have a record of Ms. Calderon's report. The employer has not established that it ended Ms. Calderon's employment for disqualifying, job-related misconduct. So, Ms. Calderon is eligible for UI benefits.

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

<sup>7</sup> *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984).

<sup>8</sup> *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984).

**DECISION:**

The April 18, 2024 (reference 01) UI decision is REVERSED. The employer discharged Ms. Calderon from employment on April 26, 2024 for a reason that does not disqualify her from receiving UI benefits. Ms. Calderon is eligible for REGULAR (state) UI benefits, as long as no other decision denies her UI benefits.



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Daniel Zeno  
Administrative Law Judge

May 16, 2024  
Decision Dated and Mailed

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**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 IA 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 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 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.