

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

**JULIA NAKAMURA**  
Claimant

**APPEAL NO. 23A-UI-07132-JT-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**GOODWILL INDUSTRIES OF CENTRAL IA**  
Employer

**OC: 06/18/23**  
**Claimant: Appellant (1)**

Iowa Code Section 96.5(2)(a) & (d) – Discharge for Misconduct

**STATEMENT OF THE CASE:**

On July 19, 2023, Julia Nakamura (claimant) filed a timely appeal from the July 10, 2023 (reference 01) decision that disqualified the claimant for benefits and that relieved the employer's account of liability for benefits, based on the deputy's conclusion that the claimant was discharged on June 12, 2023 for dishonesty in connection with the employment. After due notice was issued, the appeal hearing commenced on August 4, 2023 and concluded on August 22, 2023. Claimant participated. Stephanie Tran represented the employer. Exhibits 1 through 8, and A were received into evidence.

**ISSUE:**

Whether the claimant was discharged for misconduct in connection with the employment.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds:

Julia Nakamura (claimant) was employed by Goodwill Industries of Central Iowa as a full-time store clerk at the Jordan Creek Goodwill store from January 2022 until June 14, 2023, when the employer discharged her from the employment.

On May 29, 2023, the claimant conspired with and aided and abetted a coworker, Rich, in a knowing and intentional violation of the employer's employee purchasing policy. On the morning of May 29, 2023, while the claimant and the coworker, Rich, worked at adjacent work stations, Rich stashed donated items under his work station so that he could purchase them at the end of his shift. The claimant was present, actively engaged in discussion with the coworker regarding the items, and observed as the coworker placed the items under his workstation. About two hours later, at the end of the coworker's shift, the claimant coordinated with the coworker to move the stashed items from the sorting room to the sales floor, where the coworker was waiting to purchase the items. The claimant moved the stashed items from under the coworker's workstation to a cart. The claimant then wheeled the cart from the back room to a rendezvous point in a distant section of the sales floor. The coworker, who had just ended his

shift, met the claimant at the rendezvous point and transferred the items from the claimant's work cart to the coworker's shopping cart. The coworker then took the items to the cash register and purchased the items.

The claimant's conduct violated the employer's employee purchase policy and Internal Loss Prevention policy, which prohibited employees from setting aside, stashing or concealing items for purchase at a later time. The Loss Prevention policy warned that employees could be disciplined and/or discharged for violation the policy. The claimant had received training in the policies at the start of the employment and was fully aware of the policies.

The employer also considered an earlier violation of the employee purchase and Internal Loss Prevention policy from January 2023, wherein the claimant admitted to concealing items in e-commerce tubs when managers were not looking for later purchase during her breaks. The employer issued a written reprimand in connection with the January 2023 matter and directed the claimant to re-take the applicable training modules.

The claimant's coworker was also discharged in response to the May 29, 2023 self-dealing incident.

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

Iowa Code section 96.5(2)(a) and (d) provides as follows:

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:

...

(2) Knowing violation of a reasonable and uniformly enforced rule of an employer.

...

Iowa Admin. Code r. 871-24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

- a. For the purposes of this rule, “misconduct” is defined as 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 a 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:

...

- (2) Knowing violation of a reasonable and uniformly enforced rule of an employer.

...

The employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See *Lee v. Employment Appeal Board*, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See *Gimbel v. Employment Appeal Board*, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

While past acts and warnings can be used to determine the magnitude of the current act of misconduct, a discharge for misconduct cannot be based on such past act(s). The termination of employment must be based on a current act. See 871 IAC 24.32(8). In determining whether the conduct that prompted the discharge constituted a “current act,” the administrative law judge considers the date on which the conduct came to the attention of the employer and the date on which the employer notified the claimant that the conduct subjected the claimant to possible discharge. See also *Greene v. EAB*, 426 N.W.2d 659, 662 (Iowa App. 1988).

Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. See Iowa Administrative Code rule 871-24.32(4).

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, 394-395 (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 Ct. 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.*

The evidence in the record establishes a discharge for misconduct in connection with the employment. The claimant provided non-credible, highly implausible testimony regarding both incidents that factored in the discharge. The claimant’s testimony regarding the January matter was readily refuted by the disciplinary warning the claimant signed in January 2023. The claimant’s testimony regarding the May 29, 2023 conduct was readily refuted by the video surveillance record. In January 2023, the claimant knowingly and intentionally engaged in self-

dealing behavior that violated the employer's reasonable and uniformly enforced employee purchase and loss prevention policies. The claimant received a written reprimand for the behavior. Despite that experience, the claimant knowingly and intentionally conspired with and aid and abetted a coworker in violating the same policies on May 29, 2023. The claimant's conduct in both instances demonstrated a willful and wanton violation of the employer's trust and disregard for the employer's interests. The claimant is disqualified for benefits until the claimant has worked in and been paid wages for insured work equal to 10 times the claimant's weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account shall not be charged for benefits.

**DECISION:**

The July 10, 2023 (reference 01) decision is AFFIRMED. The claimant was discharged on June 14, 2023 for misconduct in connection with the employment. The claimant is disqualified for benefits until the claimant has worked in and been paid wages for insured work equal to 10 times the claimant's weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account shall not be charged for benefits.



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James E. Timberland  
Administrative Law Judge

August 30, 2023  
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:

**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>.

**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 está en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

**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.