

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

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**FELICIA MORENO**  
Claimant

**APPEAL 24A-UI-07135-DZ-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**COUNCIL BLUFFS COMM SCHOOL DIST**  
Employer

**OC: 06/30/24  
Claimant: Respondent (2)**

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

**STATEMENT OF THE CASE:**

Council Bluffs Comm School Dist, the employer/appellant,<sup>1</sup> appealed the Iowa Workforce Development (IWD) July 30, 2024 (reference 01) unemployment insurance (UI) decision. IWD found Ms. Moreno eligible for REGULAR (state) UI benefits because IWD concluded the employer dismissed her from employment on June 24, 2024 for a reason that did not disqualify her from receiving UI benefits. On August 13, 2024, the Iowa Department of Inspections, Appeals, and Licensing (DIAL), UI Appeals Bureau mailed a notice of hearing to the employer and Ms. Moreno for a telephone hearing scheduled for August 26, 2024.

The administrative law judge held a telephone hearing on August 26, 2024. The employer participated in the hearing through Kelly Fisher, benefits specialist, and Julie Foster, chief human resources officer. Ms. Moreno participated in the hearing personally. The administrative law judge admitted Department's Exhibits 1-3, and Employer's Exhibits 1-2 as evidence. The administrative law judge did not admit Employer's Exhibit 3 because it is a duplicate of Employer's Exhibits 1-2.

The administrative law judge concludes Ms. Moreno is not eligible for REGULAR (state) UI benefits based on how her job ended with this employer, IWD overpaid her \$4,656.00 in REGULAR (state) UI benefits, and she is required to repay these benefits back to IWD.

**ISSUES:**

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

Did IWD overpay Ms. Moreno UI benefits?

If so, should she repay the benefits?

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<sup>1</sup> Appellant is the person or employer who appealed.

## **FINDINGS OF FACT:**

Having reviewed the evidence in the record, the administrative law judge finds: Ms. Moreno began working for the employer in March 2017. She worked as a full-time bilingual community liaison. Her employment ended on June 24, 2024.

In May 2017, the employer asked Ms. Moreno to translate Individualized Education Plans (IEP), as an additional job task outside of her full-time job, at a pay rate of \$20.00 per hour. Ms. Moreno is not a trained translator. The employer told Ms. Moreno this was a way for the employer to cut costs by not paying non-employee translators. Ms. Moreno accepted the additional work.

For the next seven years, Ms. Moreno translated IEPs for the employer. The IEP's ranged in pages from 10 – 40 pages each. Ms. Moreno turned in monthly timesheets for this work to the secretary for the employer's Director of Special Education. The secretary reviewed and stamped the timesheet, submitted it to payroll and the employer paid Ms. Moreno for her work. The employer also paid Ms. Moreno for her full-time job.

In about 2020, the translation workload became too much for Ms. Moreno to handle on her own. Ms. Moreno understood that the employer wanted to save money, so she enlisted the help of her sister, who is a trained translator. Ms. Moreno began having her sister translate some of the IEPs. Ms. Moreno submitted her monthly timesheet with her, and her sister's hours listed as her own hours. Sometimes, Ms. Moreno's sister would tell Ms. Moreno about hours she worked after Ms. Moreno had already turned in her timesheet. In those cases, Ms. Moreno would put those hours on her next timesheet as her own hours. When the employer would pay Ms. Moreno, she would then pay her sister for the hours her sister worked.

Ms. Foster began working as the employer's chief human resources officer in May 2024. In mid-June 2024, payroll staff reported to Ms. Foster and the chief financial officer that Ms. Moreno turned in a monthly timesheet listing over 100 hours. Payroll staff had raised issues with Ms. Moreno's timesheet in the past, but the employer took no action. This time, Ms. Foster took action. Ms. Foster began investigating the matter because of the high hours Ms. Moreno reported for work she did that was outside of her full-time job.

Ms. Foster reviewed Ms. Moreno's timesheets for the past two years, the translation assignments given to Ms. Moreno during this time, and Ms. Moreno's emails completing the assignments. Ms. Foster saw that Ms. Moreno was regularly submitting hours on her timesheets after she had already submitted the assignment as completed. Ms. Foster interviewed Ms. Moreno to try to learn what was going on. Ms. Moreno told Ms. Foster that she had her sister helping her translate the IEPs because it was a lot of work for her to do in addition to her full-time job. This was the first time Ms. Moreno knew that there were any issues with her translation work.

The employer's policy prohibits theft and provides that any employee who violates the policy is subject to the employer terminating their employment immediately. Ms. Moreno most recently acknowledged receiving a copy of the policy in October 2023. Ms. Foster concluded that Ms. Moreno violated the employer's policy prohibiting theft. On June 24, Ms. Foster terminated Ms. Moreno's employment.

IWD paid Ms. Moreno \$4,656.00 in REGULAR (state) UI benefits for eight weeks between June 30, 2024 and August 24, 2024. The employer participated in the fact-finding interview through Lisa Durnell, senior unemployment insurance consultant.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the employer discharged Ms. Moreno from employment on June 24, 2024 for disqualifying, job-related misconduct, 2) IWD overpaid Ms. Moreno \$4,656.00 in REGULAR (state) UI benefits, and 3) Ms. Moreno is required to repay these benefits back to IWD.

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.<sup>2</sup> The issue is not whether the employer made a correct decision in separating Ms. Moreno from employment, but whether she is entitled to unemployment insurance benefits.<sup>3</sup> Misconduct must be "substantial" to warrant a denial of job insurance benefits.<sup>4</sup>

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.<sup>5</sup> 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 Ms. Moreno stole from the employer by essentially subcontracting her sister to do some of her job tasks, reporting the hours her sister

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

<sup>3</sup> *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984).

<sup>4</sup> *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984).

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

worked as her own, receiving payment from the employer for work her sister did, then paying her sister. Even though it took the employer years to figure out Ms. Moreno's scheme, Ms. Moreno's conduct is misconduct. Since the employer has established disqualifying, job-related misconduct on the part of Ms. Moreno, she is not eligible for REGULAR (state) UI benefits.

IWD Overpay Ms. Moreno \$4,656.00 in REGULAR (state) UI Benefits.  
And She is Required to Repay These Benefits Back to IWD.

Iowa Code §96.3(7) provides, in relevant part:

*7. Recovery of overpayment of benefits.*

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) (a) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. The employer shall not be relieved of charges if benefits are paid because the employer or an agent of the employer failed to respond timely or adequately to the department's request for information relating to the payment of benefits. This prohibition against relief of charges shall apply to both contributory and reimbursable employers. If the department determines that an employer's failure to respond timely or adequately was due to insufficient notification from the department, the employer's account shall not be charged for the overpayment.

(b) However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment.

Iowa Admin. Code r. 871-24.10 provides, in relevant part:

Employer and employer representative participation in fact-finding interviews.

(1) "Participate," as the term is used for employers in the context of the initial determination to award benefits pursuant to Iowa Code section 96.6, subsection 2, means submitting detailed factual information of the quantity and quality that if unrebutted would be sufficient to result in a decision favorable to the employer. The most effective means to participate is to provide live testimony at the interview from a witness with firsthand knowledge of the events leading to the separation. If no live testimony is provided, the employer must provide the name and telephone number of an employee with firsthand information who may be contacted, if necessary, for rebuttal. A party may also participate by providing

detailed written statements or documents that provide detailed factual information of the events leading to separation. At a minimum, the information provided by the employer or the employer's representative must identify the dates and particular circumstances of the incident or incidents, including, in the case of discharge, the act or omissions of the claimant or, in the event of a voluntary separation, the stated reason for the quit. The specific rule or policy must be submitted if the claimant was discharged for violating such rule or policy. In the case of discharge for attendance violations, the information must include the circumstances of all incidents the employer or the employer's representative contends meet the definition of unexcused absences as set forth in 871—subrule 24.32(7). On the other hand, written or oral statements or general conclusions without supporting detailed factual information and information submitted after the fact-finding decision has been issued are not considered participation within the meaning of the statute.

Since Ms. Moreno is not eligible for REGULAR (state) UI benefits based on how her job ended with the employer, she is not eligible for the UI benefits IWD already sent her. IWD overpaid Ms. Moreno \$4,656.00 in REGULAR (state) UI benefits for 8 weeks between June 30, 2024 and August 24, 2024. Since the employer participated in the fact-finding interview, Ms. Moreno is required to repay these benefits back to IWD.

**DECISION:**

The July 30, 2024, (reference 01) UI decision is REVERSED. The employer discharged Ms. Moreno from employment on June 24, 2024 for disqualifying, job-related misconduct. Ms. Moreno is not eligible for REGULAR (state) UI benefits until she has worked in and been paid wages for insured work equal to ten times her weekly UI benefit amount, as long as no other decision denies her UI benefits.

IWD overpaid Ms. Moreno \$4,656.00 in REGULAR (state) UI benefits for 8 weeks between June 30, 2024 and August 24, 2024. Since the employer participated in the fact-finding interview, Ms. Moreno is required to repay these UI benefits back to IWD.



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Daniel Zeno  
Administrative Law Judge

August 29, 2024  
Decision Dated and Mailed

**APPEAL RIGHTS.** If you disagree with this 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**

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**

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.