

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

LUCAS P YEZEK
Claimant

APPEAL NO. 24A-UI-03853-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

AG PROCESSING INC A COOPERATIVE
Employer

OC: 03/10/24
Claimant: Respondent (2)

Iowa Code Section 96.5(2)(a) & (d) – Discharge for Misconduct
Iowa Code Section 96.3(7) - Overpayment

STATEMENT OF THE CASE:

On April 16, 2024, the employer filed a timely appeal from the April 8, 2024 (reference 03) decision that allowed benefits to the claimant, provided the claimant met all other eligibility requirements, and that held the employer's account could be charged for benefits, based on the deputy's conclusion that the claimant was discharged on March 11, 2024 for no disqualifying reason. After due notice was issued, a hearing was held on May 2, 2024. Lucas Yezek (claimant) did not comply with the hearing notice instructions to call the designated toll-free number at the time of the hearing and did not participate. Barbara Buss of Equifax represented the employer and presented additional testimony through Derek Marth and Kim Brammer. The administrative law judge took official notice of the IWD record of benefits disbursed to the claimant and received Exhibits 1, 2, 3, 5 and 6 into evidence. Exhibit 4 was not admitted. The administrative law judge took official notice of the fact-finding materials for the limited purpose of determining whether the employer participated in the fact-finding interview and, if not, whether the claimant engaged in fraud or intentional misrepresentation in connection with the fact-finding interview.

ISSUES:

Whether the claimant was discharged for misconduct in connection with the employment.
Whether the claimant was overpaid benefits.
Whether the claimant must repay overpaid benefits.
Whether the employer's account may be charged.

FINDINGS OF FACT:

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

Lucas Yezek (claimant) was employed by Ag Processing Inc. as a full-time material handler from November 13, 2023 until March 11, 2024, when the employer discharged him from the employment for violating the employer's cell phone policy.

The employer restricts employee cell phones to the break room and the employee's vehicle. The employer's facility includes areas with increased fire risk due to the presence of flammable materials including flammable dust. The employer deems the presence of cell phones and other electrical devices in those areas a safety hazard.

At the start of the employment, the employer provided the claimant with a Code of Ethics and a separate set of Work Rules. The Code of Ethics included a section about the company's emphasis on workplace safety. The Work Rules document included a list of "Serious Conduct Violations" that could warrant immediate discharge from the employment. The list included "Unauthorized use of mobile devices or electronic equipment in prohibited areas." The employer also reminded new employees, including the claimant, of the cell phone policy by frequently including the policy in a daily communications memo.

On March 9, 2024, the claimant's supervisor discovered the claimant's personal phone in a locker in the control room of the claimant's work area. The claimant told the supervisor that he had forgotten he had the phone in his possession when he entered the work area. The supervisor reminded the claimant that he could not possess the phone in the work area and directed the claimant to take the phone to the break room.

Derek Marth, Plant Manager, reviewed video surveillance that showed the claimant having and reviewing his phone in the work area on both March 8 and 9, 2024. The video surveillance contradicted the claimant's assertion that he had merely forgotten the phone on a single occasion. The surveillance record indicated instead that the claimant had knowingly and intentionally violated the cell phone policy on two consecutive days.

On March 11, 2024, Mr. Marth spoke with the claimant regarding the documented possession and use of the personal cell phone in the work area on March 8 and 9, 2024. At that time, the claimant acknowledged possessing the cell phone in the work area on the two days in violation of the cell phone policy. The claimant apologized for the conduct. The employer moved forward with discharging the claimant on March 11, 2024 for the repeated violation of the cell phone policy.

The claimant established an original claim for benefits that was effective March 10, 2024. The claimant received \$1,236.00 in benefits for three weeks between March 10, 2024 and March 30, 2024.

This employer is not a base period employer, has not been charged for benefits in connection with the March 10, 2024 original claim, and cannot be charged for benefits in connection with the benefit year that began March 10, 2024.

On April 5, 2024, Iowa Workforce Development Benefits Bureau held a fact-finding interview that addressed the claimant's discharge from the employment. The employer's representative, Equifax, had filed a protest of the claim via SIDES and had provided a phone number for Equifax in the protest materials. Equifax had not provided a direct number for the employer. At the time of the fact-finding interview, the IWD deputy called the employer's number of record and spoke with an Equifax agent who stated there was no other information to provide. The Equifax agent directed the deputy to consider the information in the SIDES protest materials. The SIDES protest materials included the same exhibits submitted for the appeal hearing, including the relevant employer policies and the discharge letter that detailed the conduct that triggered the discharge. The claimant participated in the fact-finding interview and provided a statement that included willful misrepresentation of material facts. The claimant repeated at the

fact-finding interview the false statement he had originally given to the employer, that he had merely forgotten his cell phone in his pocket and put it in the locker on the one occasion.

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.

...

See also Iowa Admin. Code r. 871-24.32(1)(a) (duplicating the text of the statute).

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 Iowa Admin. Code r.871 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 871 IAC 24.32(4).

The evidence in the record establishes a March 11, 2024 discharge for misconduct in connection with the employment. The weight of the evidence indicates the claimant knowingly and intentionally violated the employer's cell phone policy on March 8 and 9, 2024. The weight of the evidence establishes that the claimant was intentionally dishonest with the employer when the employer questioned the claimant on March 9, 2024 after finding the claimant's phone in the work area. The claimant's repeated violation of the reasonable and uniformly enforced cell phone policy, as well as the claimant's intentional dishonesty, indicated an intentional and substantial disregard of the employer's interests and constituted misconduct in connection with the employment. The claimant is disqualified for benefits until he has worked in and been paid wages for insured work equal to 10 times his weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account shall not be charged for benefits.

Iowa Code section 96.3(7) provides in relevant part as follows:

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.

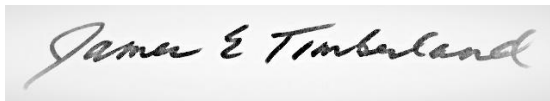
See also Iowa Admin. Code Rule 87124.10 (regarding employer participation in fact-finding interviews and repayment of overpaid benefits).

The claimant received \$1,236.00 in benefits for three weeks between March 10, 2024 and March 30, 2024, but this decision disqualifies the claimant for those benefits. The benefits are an overpayment. The employer is not a base period employer and, therefore, has not been charged and cannot be charged for benefits in connection with the March 10, 2024 benefit year. The employer protest documentation was sufficient to constitute participation in the fact-finding interview. The claimant intentionally misrepresented material facts at the fact-finding interview

by repeating the false statement he initially provided to the employer. The claimant must repay the overpaid benefits.

DECISION:

The April 8, 2024 (reference 03) decision is REVERSED. The claimant was discharged on March 11, 2024 for misconduct in connection with the employment. The claimant is disqualified for unemployment benefits until he has worked in and been paid wages for insured work equal to 10 times his weekly benefit amount. The claimant must meet all other eligibility requirements. The claimant is overpaid \$1,236.00 in benefits for three weeks between March 10, 2024 and March 30, 2024. The claimant must repay the overpaid benefits. The employer's account shall not be charged.



James E. Timberland
Administrative Law Judge

May 10, 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 Ave 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>.

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 Ave Suite 100
Des Moines, Iowa 50321
Fax: (515)281-7191
Online/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 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.