

**IOWA DEPARTMENT OF INSPECTIONS AND APPEALS
ADMINISTRATIVE HEARINGS DIVISION, UI APPEALS BUREAU**

EVAN J EIDE
Claimant

FORT DODGE COMMUNITY SCH DISTR
Employer

APPEAL 22A-UI-17758-DZ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 08/28/22
Claimant: Appellant (2R)

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

STATEMENT OF THE CASE:

Evan J. Eide, the claimant/appellant, filed an appeal from the Iowa Workforce Development (IWD) September 28, 2022 (reference 01) unemployment insurance (UI) decision. The decision denied REGULAR (state) UI benefits because IWD concluded that the employer discharged Mr. Eide from work on August 4, 2022 for conduct not in the best interest of the employer. The parties were properly notified of the hearing. A telephone hearing was held on November 10, 2022. Mr. Eide participated personally. Michael Carroll, attorney, represented Mr. Eide. The employer participated through Kimberly Whitmore, director of human resources, Ryan Utley, supervisor, director of buildings and grounds, and John Johnson, assistant director of buildings and grounds. Jazmine Polk, attorney, represented the employer. The administrative law judge admitted Claimant's Exhibits A and B and Employer's Exhibit 1 as evidence.

ISSUE:

Did the employer discharge Mr. Eide from employment for disqualifying, job-related misconduct?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: Mr. Eide began working for the employer on December 5, 2016. He worked as a full-time paraeducator, and as of August 2017, he worked as a full-time custodian. His employment ended on August 4, 2022.

On Tuesday, August 2, 2022, Mr. Eide's manager, the head custodian, reported to Mr. Utley that Mr. Eide had not completed his assigned work the previous day. The head custodian also reported to Mr. Utley that an administrative staff person reported to him that 1) Mr. Eide had told the administrative staff person that Mr. Eide had tried crack cocaine, and 2) Mr. Eide had told the administrative staff person that the person accused of shooting and wounding multiple people in Highland Park, Illinois in July 2022 was smart to dress as a woman. Mr. Utley reviewed the employer's video footage from Monday, August 1 and saw Mr. Eide walking up and down hallways, and entering classrooms and leaving within about ten seconds. Mr. Utley concluded that Mr. Eide had worked for about fifteen minutes on August 1. Mr. Eide does not remember walking up and down hallways and entering and leaving classrooms.

Mr. Utley and Mr. Johnson spoke with Mr. Eide about the situation. Mr. Eide admitted that he did not work much on August 1. Mr. Eide stated that he did not like his co-workers, and he could not get help with some his assigned work. Mr. Utley and Mr. Johnson told Mr. Eide that they would get him help for his tasks. Mr. Utley asked Mr. Eide about the statements the administrative staff person alleged Mr. Eide to have made. Mr. Eide said he was joking about the crack cocaine statement. Mr. Eide denied making the statement about the accused person in the Highland Park shooting and further said if he did make that statement he was joking. In the appeal hearing Mr. Eide testified that he was being sarcastic when he made the comment about the person accused of the shooting, and he also called the person an idiot. Several times during the meeting Mr. Eide said that he was going to quit but he took it back each time. Mr. Eide was agitated during the meeting. In Mr. Utley's view, Mr. Eide was no more agitated in the meeting than he had been at other times when he was agitated. At the end of the meeting, Mr. Eide asked to take an early lunch to calm himself to which Mr. Utley agreed. Mr. Eide took an early lunch and returned to work after lunch.

Later that day, the head custodian contacted Mr. Utley again and reported that Mr. Eide was not working again. Mr. Utley contacted Ms. Whitmore and the two of them along with Mr. Johnson called Mr. Eide into a classroom for a meeting. Mr. Eide came into the meeting and said something to the effect of "you want to do this the easy way or the hard way," slammed his keys and badge onto a desk and said he was going to quit. Mr. Utley asked Mr. Eide what was going on. Mr. Eide calmed down a bit and stated that he had been diagnosed with bipolar disorder. This was the first time Mr. Eide had told the employer about his mental health diagnosis. Mr. Eide had been diagnosed in June 2022 after a manic episode. Mr. Eide's doctor had told him that one of the symptoms of bipolar disorder is acting impulsively. Mr. Eide asked for Family Medical Leave Act (FMLA) paperwork. Mr. Eide does not remember asking the employer for FMLA paperwork and he does not remember telling the employer about his mental health diagnosis that day. Mr. Eide also asked if he would be paid for sick leave if he quit. Ms. Whitmore told him no. Mr. Eide said he had a different job lined up. Mr. Eide did not have a new job at that time. Mr. Utley sent Mr. Eide home early that day and told him that the employer would discuss the matter with the school district superintendent and follow up with him. After the meeting, Ms. Whitmore emailed the FMLA paperwork to Mr. Eide. Ms. Whitmore, Mr. Utley and Mr. Johnson discussed the matter with the superintendent. The superintendent decided to terminate Mr. Eide's employment.

Mr. Eide took vacation leave on Wednesday and Thursday, August 3 and 4. That Thursday, the employer asked Mr. Eide to meet in-person. Mr. Eide, his union representative, Ms. Whitmore, Mr. Utley and Mr. Johnson met.

The employer gave Mr. Eide a packet of document that included two letters, a copy of an August 23, 2019 written warning, copies of some of the employer's policies, Mr. Eide's 2020 performance evaluation, and a list of Mr. Eide's absence between August 2021 and August 2022. Both of the letters were dated August 4, 2022 and signed by the superintendent. One letter was on the employer's letterhead and stated that the superintendent would recommend to the district school board that the school board terminate Mr. Eide's employment at its August 8 meeting "...based upon the concerns described in the attached letter."¹ The letter told Mr. Eide that he could resign, in which case the school board would accept his resignation and he would not be fired.² The letter also told Mr. Eide that he could attend the August 8 school board

¹ Employer's Exhibit 1, page 3.

² *Id.*

meeting and make his case to the board.³ The other letter, not on the employer's letterhead, told Mr. Eide that the employer terminated his employment effective August 4, 2022 "for cause...based on a meeting held with your supervisor on Tuesday, August 2, 2022."⁴ After listing the employer's policies and Mr. Eide's discipline record, the letter concludes that Mr. Eide's "...recent inappropriate conversations have left co-workers and staff uncomfortable and are seriously concerning" and that Mr. Eide did not complete his assigned task and had "no good reason" for not doing so."⁵

After giving him the packet of documents, Mr. Utley told Mr. Eide that his job was over. Mr. Utley told Mr. Eide that he could resign instead of the employer firing him and that he had until 4:30 p.m. on Friday, August 5 to decide. Mr. Eide wrote a resignation letter and signed it then and there. Mr. Utley told Mr. Eide again that he had until 4:30 p.m. on Friday, August 5 to decide. Mr. Eide gave the letter to the employer and left the meeting. In the appeal hearing, Mr. Eide testified that he does not remember writing the resignation letter, but he remembers signing it.

On August 5, Mr. Eide had second thoughts about his resignation. Mr. Eide felt like he didn't have a choice on August 4, and he wanted a union lawyer to be with him in the meeting instead of a union representative. Mr. Eide went to the school with the goal of taking back his resignation, but the employer would not let him into the building. Mr. Eide sent Ms. Whitmore an email taking back his resignation. Mr. Eide does not recall sending Ms. Whitmore this email.

On August 8, Mr. Eide's father asked Mr. Eide's doctor to send the employer a letter about Mr. Eide's mental health diagnosis. The doctor did so, and Ms. Whitmore received the letter that day. At that point the issue of Mr. Eide's employment was already on the school board's agenda. Ms. Whitmore did not share the letter with the superintendent. Before the school board meeting, Mr. Eide's father spoke with Ms. Whitmore in person and asked that Mr. Eide's resignation be cancelled because of Mr. Eide's mental health diagnosis. Ms. Whitmore explained that the issue was now up to the school board. The school board terminated Mr. Eide's employment on August 8 at its board meeting and sent Mr. Eide a letter saying the same.

Before the employer ended his employment, Mr. Eide's last discipline was a written warning in 2019.⁶ From 2019 through 2022, the employer gave Mr. Eide multiple verbal warnings because he was not meeting the employer's work performance expectations. Mr. Eide's 2020 performance evaluation noted that he needed to improve in completing work effectively.⁷

Mr. Eide was in the hospital for one week in September 2022. IWD has not yet investigated that issue of Mr. Eide's availability to work during that week. This issue should be remanded (sent back) to IWD for investigation.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the employer discharged Mr. Eide from employment for no disqualifying reason.

Iowa Code section 96.5(2)(a) and (d)(4)and (5) provide:

³ *Id.*

⁴ *Id.* at 5.

⁵ *Id.* at 7.

⁶ *Id.* at 9-10.

⁷ *Id.* at 19.

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 such 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:

...

(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.

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

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being 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. On the other hand mere inefficiency,

unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

The Iowa Supreme Court has held that this definition accurately reflects the intent of the legislature. *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445, 448 (Iowa 1979).

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). 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. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984).

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 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.

Failure in job performance due to inability or incapacity is not considered misconduct because the claimant's actions were not volitional.⁸ Where a person is discharged due to a failure in job performance, proof of that person's ability to do the job is required to justify disqualification, rather than accepting the employer's subjective view. To do so is to impermissibly shift the burden of proof to the claimant.⁹

In this case, by the employer's account, Mr. Eide had issues performing his job duties to the employer's satisfaction from 2019 through the end of his employment, and there is no evidence in the record that Mr. Eide was intentionally not performing his job duties to the employer's satisfaction. Inasmuch as Mr. Eide attempted to perform the job to the best of his ability but was not able to meet the employer's expectations, the employer has not established intentional misconduct. Furthermore, Mr. Eide has a plausible explanation for his bad work performance for at least some of the time – his bipolar diagnosis.

Regarding the statements Mr. Eide made about crack cocaine and the person accused in the Highland Park shooting, the employer has also failed to establish disqualifying, job-related misconduct. There is no evidence in the record, for example from a drug test, that Mr. Eide used crack cocaine at work or reported to work under the influence of an illegal drug. All the employer has is Mr. Eide's statement that he tried crack cocaine. Without more, this does not rise to the level of misconduct. Regarding Mr. Eide's statement about the person accused in the Highland Park shooting, again, all the employer has are Mr. Eide's words. Mr. Eide provided context for his comment testifying that he was being sarcastic when he said the person was smart to dress like a woman and testifying that he also called the person an idiot. There is no evidence in the record that Mr. Eide made any threats, had any weapons, or took any action. It is understandable that the employer would be concerned about an employee who makes such

⁸ *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

⁹ *Kelly v. Iowa Dep't of Job Serv.*, 386 N.W.2d 552 (Iowa Ct. App. 1986).

statements. However, making such statements without more does not rise to the level of misconduct. Benefits are allowed.

Analyzing this case as a quit in lieu of discharge leads to the same result. A voluntary quitting of employment requires that an employee exercise a voluntary choice between remaining employed or terminating the employment relationship.¹⁰ A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention.¹¹ In this case, Mr. Eide did not express an intent to end the employment relationship. The employer told Mr. Eide that he would be fired, but he could quit instead of being fired. Therefore, the case must be analyzed as a discharge from employment.¹² In quit in lieu of discharge cases, the administrative law judge considers whether the evidence establishes misconduct that would disqualify the claimant for UI benefits. Here, the evidence does not.

Since the employer has not established disqualifying, job-related misconduct, benefits are allowed.

DECISION:

The September 28, 2022 (reference 01) UI decision is REVERSED. The employer discharged Mr. Eide from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

REMAND:

The issue of Mr. Eide's availability to work during the week in September 2022 when he was in the hospital is REMANDED (sent back) to the IWD Benefits Bureau for investigation.



Daniel Zeno
Administrative Law Judge

November 21, 2022
Decision Dated and Mailed

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¹⁰ *Wills v. Emp't Appeal Bd.*, 447 N.W.2d 137, 138 (Iowa 1989); *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438, 440 (Iowa Ct. App. 1992).

¹¹ *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980).

¹² *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992).

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
4th Floor – Lucas Building
Des Moines, Iowa 50319
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:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
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 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.