

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

BREANNA M MANDICINO
Claimant

APPEAL 23A-UI-01022-DZ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

TMONE LLC
Employer

**OC: 01/01/23
Claimant: Respondent (1)**

Iowa Code § 96.5(1) – Voluntary Quit
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Admin. Code r. 871-24.10 – Employer Participation in Fact-Finding Interview

STATEMENT OF THE CASE:

TMone LLC, the employer/appellant, filed an appeal from the Iowa Workforce Development (IWD) January 25, 2023 (reference 01) unemployment insurance (UI) decision. The decision allowed Ms. Mandicino REGULAR (state) UI benefits because IWD concluded that the employer had dismissed her from work on December 18, 2022 for a reason that did not disqualify her from receiving UI benefits. The Iowa Department of Inspections and Appeals UI Appeals Bureau mailed notices of hearing to the employer and Ms. Mandicino. A telephone hearing was held on February 16, 2023. The employer participated through Kate Murph, vice president of human resources. Ms. Mandicino participated personally. The administrative law judge took official notice of the administrative record.

ISSUES:

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

Did IWD overpay Ms. Mandicino UI benefits?

If so, should she repay the benefits?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: Ms. Mandicino began working for the employer on October 19, 2020. She worked as a full-time telephone agent. Ms. Mendocino's usual work schedule was Sunday – Tuesday, 10:00 a.m. – 10:30 p.m. She worked remotely full-time. Her employment ended on January 2, 2023.

On Sunday, December 11, 2022, Ms. Mandicino emailed her team lead and stated that she could not attend work due to personal reasons. The team lead told Ms. Mandicino that was okay since the employer did not require her to work that weekend. On Monday, December 12, Ms. Mandicino called in and let her team lead know that she had tested positive for COVID-19. The team lead responded that she hoped Ms. Mandicino would feel better. Ms. Mandicino did not call-in or attend work on Tuesday, December 13.

On December 19, Ms. Mandicino told her team lead that the charger for the employer's laptop was not working. Ms. Mandicino, her team lead, and her supervisor communicated again about the laptop charger on Thursday, December 22 and Friday, December 23. At some point, the employer sent Ms. Mandicino shipping labels so she could send the laptop charger to the employer to receive a new one.

Ms. Mandicino was scheduled to work on Monday, December 26 and Tuesday, December 27. Ms. Mandicino did not work and did not call-in either day. That Monday, Ms. Mandicino and her supervisor texted each other about work issues. The supervisor did not say anything to Ms. Mandicino about working or the laptop charger. At some point, the employer suggested that Ms. Mandicino buy a laptop charger and receive reimbursement and Ms. Mandicino did so.

On Monday, January 2, Ms. Mandicino emailed her team lead. Ms. Mandicino had purchased a laptop charger by them. The team lead told Ms. Mandicino to contact the supervisor. Ms. Mandicino did so. The supervisor told Ms. Mandicino that her employment was over but did not offer a reason for the termination. Ms. Mandicino asked the supervisor for a reason. The supervisor stated that they did not know the reason. The employer had not disciplined Ms. Mandicino for any issues before the termination of her employment.

Ms. Murph testified in the appeal hearing that the employer had terminated Ms. Mandicino's employment as of Tuesday, December 20 because she was a No-Call/No-Show Tuesday, December 13 through Friday, December 16. The employer's policy requires employees to call the attendance line or contact their team lead if the employee does not attend work. The employer considered Ms. Mandicino to have abandoned her job as of December 20.

REASONING AND CONCLUSIONS OF LAW:

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

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

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.

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.¹

The employer has the burden of proof in establishing disqualifying job misconduct.² 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.³ Misconduct must be "substantial" to warrant a denial of job insurance benefits.⁴

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.

An employee is entitled to fair warning that the employer will no longer tolerate certain performance and conduct. Without fair warning, an employee has no reasonable way of knowing that there are changes that need be made to keep their job. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given. Training or general notice to staff about a policy is not considered a disciplinary warning.

In this case, Ms. Mandicino reported the laptop charger issue to the employer on December 19. Ms. Mandicino continued to talk with the employer about that issue and other issues. But, at no

¹ *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445, 448 (Iowa 1979).

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

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

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

point, did not the employer tell or warned Ms. Mandicino that she was doing anything wrong or that she needed to do anything different. Furthermore, Ms. Mandicino was not scheduled to work on December 14-16 so those could not be No-Call/No-Shows. Ms. Mandicino was a No-Call on December 13 and 18, but she called in on December 19. In the end, the employer has not established disqualifying, job-related misconduct on the part of Ms. Mandicino. Benefits are allowed.

Since Ms. Mandicino is eligible for REGULAR (state) UI benefits per this decision, she is not required to repay the UI benefits she has already received, and the issues of overpayment and repayment are moot. An issue being moot means there is nothing left to decide.⁵

DECISION:

The January 25, 2023, (reference 01) UI decision is AFFIRMED. The employer discharged Ms. Mandicino from employment for no disqualifying reason. Benefits are allowed, as long as no other decision denies Ms. Mandicino UI benefits. Any benefits claimed and withheld on this basis shall be paid.



Daniel Zeno
Administrative Law Judge

February 23, 2023
Decision Dated and Mailed

mh

⁵ *Iowa Bankers Ass'n v. Iowa Credit Union Dep't*, 335 N.W.2d 439, 442 (Iowa 1983).

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:

**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 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.