

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

DANIEL MILLER
Claimant

APPEAL NO. 23A-UI-05447-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

NATIONWIDE MUTUAL INSURANCE CO
Employer

OC: 04/16/23
Claimant: Appellant (1)

Iowa Code § 96.5-2-a – Discharge for Misconduct
Iowa Code § 96.5-11 – Incarceration Related Discharge

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated May 17, 2023, (reference 03) which held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on June 15, 2023. Claimant participated personally and with attorney Matthew Schultz. Employer failed to respond to the hearing notice and did not participate. The administrative law judge took judicial notice of Polk Co. Case FECR 368689, its trial information and minutes of testimony and of the administrative file.

ISSUE:

Whether claimant was discharged for misconduct?

Was the separation disqualifying due to incarceration?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on April 4, 2023. According to Iowa Court Online, claimant was arrested on April 6, 2023 and remained in jail until April 14, 2023 when he was bonded out. Employer discharged claimant effective April 6, 2023 because claimant was incarcerated and missed work for a number of days of work while in jail.

Claimant worked as a full time Insurance services analyst II for employer. He worked four 10 hour days and was off from work on Wednesday, Thursday, and Sunday. Two or three days after claimant was taken into custody, (but only after missing one day of work – at the most) claimant's sister called employer to inform them that claimant was in custody. Claimant was charged with multiple felonies and other assorted charges. The matters have not been resolved.

Once claimant was released from jail, he attempted to contact his supervisor on the day of his release. He left a message stating that he had been released. Claimant was frozen out of

using his work computer. When claimant spoke with his supervisor a week or so later, he was informed that he'd been terminated. A follow-up letter indicated the reason for termination was job abandonment. Claimant stated that the letter was dated April 6, 2023. Claimant did not provide the letter to the administrative law judge.

Claimant stated that he was previously charged with the same serious felonies in Florida in March of this year. During that time, claimant was able to use vacation to cover his time away from work. That case is also still pending.

Claimant stated that he received no warning for job abandonment, or for any other matter, prior to his termination.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

Iowa Code section 96.5(11) provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

11. Incarceration--disqualified.

a. If the department finds that the individual became separated from employment due to the individual's incarceration in a jail, municipal holding facility, or correctional institution or facility, unless the department finds all of the following:

- (1) The individual notified the employer that the individual would be absent from work due to the individual's incarceration prior to any such absence.
- (2) Criminal charges relating to the incarceration were not filed against the individual, all criminal charges against the individual relating to the incarceration were dismissed, or the individual was found not guilty of all criminal charges relating to the incarceration.
- (3) The individual reported back to the employer within two work days of the individual's release from incarceration and offered services.
- (4) The employer rejected the individual's offer of services.

b. A disqualification under this subsection 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.

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982), Iowa Code § 96.5-2-a.

In matters of employee incarceration leading to termination, as was the case in the instant matter, the Iowa legislature has chosen to implement a four part test to determine an individual's eligibility for benefits. Iowa Code section 96.5(11) provides for this test. The administrative law judge will look at each requirement and apply them to the facts at hand. (1) Whether a claimant notified the employer prior to such incarceration. Here, the claimant did not inform the employer until 2-3 days after claimant was incarcerated. Seeing claimant's last day of work on April 4, 2023 and his arrest on April 6, 2023, this means that claimant's sister contacted employer on April 8 or 9 and he had already missed work prior to claimant's contacting employer. Even if claimant was arrested on April 5, 2023 he would have missed a day if claimant's sister didn't contact employer for 2-3 days after the arrest.

The second factor to be considered is (2) whether criminal charges were not filed, or were dismissed, or the individual was found not guilty of charges. Admittedly, the claimant would have a very hard time having serious felony charges dismissed or have the claimant found not guilty in a timely basis to not be terminated. By nature of trials, almost no criminal (and even fewer felony) indictment will be resolved in as expeditious a manner as is required for this prong to be resolved in a timely fashion. In this case it was not.

Regarding both prongs (3) and (4) of the requirements, claimant has satisfied both of these requirements as he did immediately offer his services after release and employer rejected the offer.

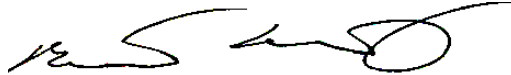
In this matter, the evidence established that claimant was discharged for an act of misconduct when claimant violated employer's policy concerning abandonment of a job by not being present to work the job.

The last incident, which brought about the discharge, constitutes misconduct because claimant is unable to satisfy the four fact test of Iowa Code section 96.5(11). The administrative law

judge holds that claimant was discharged for an act of misconduct and, as such, is disqualified for the receipt of unemployment insurance benefits.

DECISION:

The decision of the representative dated May 17, 2023, (reference 03) is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.



Blair Bennett | Administrative Law Judge II
Iowa Department of Inspections & Appeals

June 20, 2023
Decision Dated and Mailed

bab/scn

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. *There is no filing fee to file an appeal with the Employment Appeal Board.*

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 file a petition for judicial review in district court.

2. If you do not file 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 www.iowacourts.gov/efile. *There may be a filing fee to file the petition in District Court.*

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. *No hay tarifa de presentación para presentar una apelación ante la Junta de Apelación de Empleo.*

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 no presenta una apelación de la decisión del juez ante la Junta de Apelación de Empleo dentro de los quince (15) días, la decisión se convierte en una acción final de la agencia y tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días. Puede encontrar información adicional sobre cómo presentar una petición en www.iowacourts.gov/efile. *Puede haber una tarifa de presentación para presentar la petición en el Tribunal de Distrito.*

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.