

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

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**JODI HARDING**  
Claimant

**APPEAL 23A-UI-02479-SN-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**STYLIN PAWS PLAYGROUND LLC**  
Employer

**OC: 01/29/23  
Claimant: Respondent (1)**

Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Admin. Code r. 871-24.32(1)a – Discharge for Misconduct  
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment  
Iowa Admin. Code r. 871-24.10 – Recovery of Benefit Overpayment

**STATEMENT OF THE CASE:**

The employer, Stylin Paws Playground LLC, filed an appeal from the March 1, 2023, (reference 01) unemployment insurance decision that granted benefits based upon the conclusion the claimant was discharged, but disqualifying misconduct was not found. The parties were properly notified of the hearing. A telephone hearing was held on March 24, 2023 at 9:00 a.m. The administrative law judge postponed this hearing because the claimant was still recovering from a surgery.

The hearing was postponed to April 7, 2023 at 11:00 a.m. On April 6, 2023, the claimant sent 10 emails to the Appeals Bureau and the opposing party containing her proposed exhibits for the hearing. The claimant also sent these in by hard copy. The employer submitted 23 pages of documents for this hearing. The claimant participated. Facility Manager Jenn Petersen and Owner Scott Dickerson participated. Exhibits 1, 2, 3, 4, 5, 6, 7, 8 were admitted during this hearing. The administrative law judge postponed the hearing because due to the number and organization of exhibits and witness availability, the hearing could not be conducted in an ordinary timeframe. The administrative law judge asked the claimant to resubmit her exhibits in a more organized fashion, so on postponement the final hearing could be expedited.

On April 17, 2023, Facility Manager Jenn Petersen sent 70 additional documents in as proposed exhibits. Exhibits 1, 2, 3, 4, 5, 6, 7, 8 were submitted again interspersed with new exhibits, witness statements, and written objections to the claimant's original submissions. These exhibits were also sent by hardcopy.

On April 19, 2023, the claimant provided a more organized summary of her exhibits. The claimant marked these exhibits with proposed markings 1-7. These were admitted as Claimant's Exhibits A-E.

On April 20, 2023, the claimant submitted objections to the exhibits the employer submitted on April 17, 2023 by email.

Another hearing was set for April 24, 2023 at 8:00 a.m. The claimant participated and testified. The employer participated through Facility Manager Jenn Petersen and Owner Scott Dickerson. Mariah Kerns provided testimony in support. Official notice was taken of the administrative record. Exhibits A, B, C, D, E, F, G, 9, 10, 11, 12, and 13 were received into the record during this final hearing.

The claimant sent in an email the date of the hearing presumably to be considered as an exhibit. This email was not admitted because it was not sent prior to the hearing date per Iowa Admin. Code r. 871-26.15 (stating all documents must be sent to the opposing party and the Appeals Bureau before the hearing date.)

### **ISSUES:**

Was the claimant discharged for disqualifying job-related misconduct?

Whether the claimant has been overpaid benefits? Whether the claimant is excused from repayment of benefits due to the employer's non-participation?

### **FINDINGS OF FACT:**

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

The claimant worked as a full-time day stay attendant from March 30, 2021, until her employment ended on January 27, 2023, when she was terminated. The claimant worked a set schedule from 6:45 a.m. to 4:00 p.m. Day Stay Manager Kylea Miller was the claimant's immediate supervisor.

The employer has an employee code of conduct. The employer provided a copy of the employer's code of conduct. (Exhibit 1) The code of conduct states employees are expected to be punctual. The code of conduct does not reference report cards. The claimant acknowledged receipt of the code of conduct on March 24, 2021.

The employer provides a list of times the claimant was allegedly tardy beginning on April 1, 2022, through August 23, 2022. During the hearing, Ms. Petersen said she did not pull dates after August 23, 2022, so she is unsure if there were specific incident dates occurring after August 23, 2022.

On January 27, 2023, Ms. Miller informed the claimant that she was being terminated because she was "not a good fit." Ms. Miller was not made available to testify. Ms. Miller provided a written statement. (Exhibit 13) The written statement did not explain her rationale for firing the claimant in any way. When Ms. Petersen was asked if there was a final incident causing the claimant's termination, she replied it was "probably" that the claimant brought in a gate in the last few weeks of January 2023. In addition, Ms. Petersen added Ms. Miller considered the claimant's attendance history and numerous other incidents before terminating the claimant. In a written statement, Ms. Petersen even stated that the claimant's removal of documents to be offered as exhibits in this hearing constituted misconduct, even though she was unaware that occurred until the hearing. How Ms. Miller could have considered information for the claimant's termination that even Ms. Petersen was unaware of until the first appeal hearing remained unanswered.

The claimant had never been disciplined regarding any of these categories of alleged misconduct. At most, Ms. Petersen provided documents showing the claimant was talked to

regarding these expectations on eight occasions between April 14, 2022 and October 20, 2022. Ms. Petersen explained that the employer's practice is not to put someone on notice that their job could be in jeopardy prior to terminating them.

The following section of the findings of fact display the findings necessary to resolve the overpayment issue:

On February 21, 2023, Iowa Workforce Development sent a notice of fact-finding to the parties informing them of a fact-finding interview on February 27, 2023. Scott Dickerson testified on behalf of the employer. Mr. Dickerson said the claimant was terminated for attendance and driving coworkers away with her behavior, but he could not provide any dates for these incidents. He also could not provide any specific time she was warned for the same misconduct. The representative's notes do not reflect other reasons for discharge were given. According to the representative, he did not describe the many other forms of misconduct the employer vaguely alleged occurred during the hearing.

### **REASONING AND CONCLUSIONS OF LAW:**

The administrative law judge finds the employer has failed to meet its burden of production to show the claimant was terminated due to job-related misconduct. The overpayment issue need not be analyzed because the claimant is entitled to benefits.

Iowa Code section 96.5(2)a provides:

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.

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.

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(2)b, c and d provide:

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:

b. Provided further, if gross misconduct is established, the department shall cancel the individual's wage credits earned, prior to the date of discharge, from all employers.

c. Gross misconduct is deemed to have occurred after a claimant loses employment as a result of an act constituting an indictable offense in connection with the claimant's employment, provided the claimant is duly convicted thereof or has signed a statement admitting the commission of such an act. Determinations regarding a benefit claim may be redetermined within five years from the effective date of the claim. Any benefits paid to a claimant prior to a determination that the claimant has lost employment as a result of such act shall not be considered to have been accepted by the claimant in good faith.

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:

(1) Material falsification of the individual's employment application.

(2) Knowing violation of a reasonable and uniformly enforced rule of an employer.

(3) Intentional damage of an employer's property.

(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.

(6) Conduct that substantially and unjustifiably endangers the personal safety of coworkers or the general public.

(7) Incarceration for an act for which one could reasonably expect to be incarcerated that result in missing work.

(8) Incarceration as a result of a misdemeanor or felony conviction by a court of competent jurisdiction.

(9) Excessive unexcused tardiness or absenteeism.

(10) Falsification of any work-related report, task, or job that could expose the employer or coworkers to legal liability or sanction for violation of health or safety laws.

(11) Failure to maintain any licenses, registration, or certification that is reasonably required by the employer or by law, or that is a functional requirement to perform the individual's regular job duties, unless the failure is not within the control of the individual.

(12) Conduct that is libelous or slanderous toward an employer or an employee of the employer if such conduct is not protected under state or federal law.

(13) Theft of an employer or coworker's funds or property.

(14) Intentional misrepresentation of time worked or work carried out that results in the individual receiving unearned wages or unearned benefits.

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 claimant, 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). The Iowa Court of Appeals found substantial evidence of misconduct in testimony that the claimant worked slower than he was capable of working and would temporarily and briefly improve following oral reprimands. *Sellers v. Emp't Appeal Bd.*, 531 N.W.2d 645 (Iowa Ct. App. 1995). Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990). 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). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988).

Iowa Admin. Code r.871-24.32(4), (7) and (8) provide:

(4) Report required. The claimant's statement and employer's statement must give detailed facts as to the specific reason for the claimant's discharge. **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.** In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

(7) Excessive unexcused absenteeism. Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer.

(8) Past acts of misconduct. **While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.**

The administrative law judge finds the employer has failed to meet its burden to show the claimant engaged in work-related misconduct. After three hours of testimony, the administrative law judge is still not sure what ultimately caused the claimant to be terminated. Indeed, Ms. Petersen was not even sure. She said it was “probably” an issue with a gate. She could not provide the specific date this occurred. Instead, the employer has arranged a cavalcade of vague allegations of many categories of misconduct.

In the drive to grab everything and the kitchen sink to throw against the claimant, it has failed to provide specific details regarding many of the instances of misconduct. In a written statement, Ms. Petersen said the claimant’s taking of documents from the employer caused her discharge, even though she was not aware of this until well after the termination. Such a reason cannot be a disqualifying reason because Ms. Miller could not have possibly relied on information, she was not even aware existed.

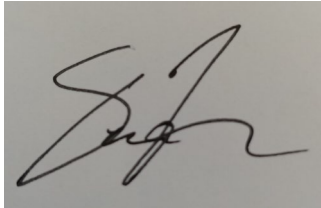
The employer also provided attendance incidents leading to the claimant’s discharge. To the extent specific dates are given, these dates occurred far in the past and could not have been used to find the underlying discharge disqualifying if the employer did terminate the claimant for attendance. See Iowa Admin. Code r.871-24.32 (8) (stating past acts of misconduct can only be evaluated to determine the magnitude of the incident causing termination.)

Employers sometimes balk at these rules as being formulistic or too technical. The administrative law judge poses in response to think about the claimant in this case. She was presented with a vague, amorphous, and ever evolving reason for her discharge. Finding disqualification on this record would impermissibly flip the burden on the claimant to prove a negative outcome regarding each of these vague supposed reasons. Such a burden would be opposite of the law’s command and would be nearly impossible because she is not even being given specific dates for most of these occurrences. Furthermore, it is simply not believable to him that Ms. Miller considered every instance of dissatisfactory behavior when making the decision.

The administrative law judge stresses that he is not weighing in on the propriety of the business reason for terminating the claimant. This decision only renders an opinion regarding whether the employer has met its burden to show that discharge is disqualifying. It has not. Benefits are granted, provided she is otherwise eligible for benefits.

**DECISION:**

The March 1, 2023, (reference 01) unemployment insurance decision is AFFIRMED. The employer has failed to meet its burden to show the claimant was discharged due to work-related misconduct. Benefits are granted, provided she is otherwise eligible for benefits.

A handwritten signature in black ink, appearing to read 'Sean M. Nelson', is written over a light gray rectangular background.

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Sean M. Nelson  
Administrative Law Judge II  
Iowa Department of Inspections & Appeals  
Administrative Hearings Division – UI Appeals Bureau

April 27, 2023  
Decision Dated and Mailed

smn/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  
4<sup>th</sup> Floor – Lucas Building  
Des Moines, Iowa 50319  
Fax: (515)281-7191  
Online: [eab.iowa.gov](http://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](http://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.