

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

---

**ANNA K EISENLAUER**  
Claimant

**APPEAL 23A-UI-11038-PT-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MARY ANN'S SPECIALTY FOODS INC**  
Employer

**OC: 10/22/23**  
**Claimant: Appellant (1)**

---

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

**STATEMENT OF THE CASE:**

The claimant filed an appeal from a decision of a representative dated November 13, 2023, (reference 01) that held claimant ineligible for unemployment insurance benefits after a separation from employment. After due notice, a telephone hearing was held on December 14, 2023. The claimant participated personally. The employer participated through Human Resources Manager Kristian Stanley, Vice President Pam Netzel, and Supervisor Rachel Formanek. Employer's Exhibits 1 through 10 were admitted into evidence. The administrative law judge took official notice of the administrative record.

**ISSUE:**

Whether claimant was discharged for disqualifying, job-related misconduct.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant was employed as a full-time administrative assistant with Mary Ann's Specialty Foods, Inc. from August 30, 2021 until her employment ended on August 24, 2023. As an administrative assistant, claimant was responsible for printing labels for products, performing data entry, preparing sample requests, and providing supplies to employees.

Claimant performed her duties as an administrative assistant adequately for stretches of time, but would then lose focus and make easily-avoidable mistakes. In November and December 2021, the employer placed claimant on two separate performance improvement plans (PIPs) due to claimant's frequently inaccurate work. Claimant failed to demonstrate satisfactory improvement during either PIP period. For this reason, after completing the second PIP, the employer removed some of claimant's job duties to try to help her succeed in the position.

In January 2023, claimant's supervisor issued claimant a verbal warning due to repeated inaccuracies in claimant's work. Shortly after issuing claimant the verbal warning, claimant's supervisor met with claimant and discussed several job duties the employer was removing from her and a new project the employer was assigning claimant. Claimant's supervisor warned claimant that if her work was not done accurately her hours would have to be reduced.

On April 12 and 25, 2023, claimant typed the wrong information onto several shipping labels for products. The mistake required the employer to resend products to several clients. After making these mistakes, claimant's supervisor met with claimant and discussed the importance of staying focused and doing accurate work. After meeting with her supervisor, claimant's work improved for a time, but she continued to make minor mistakes throughout the summer and fall of 2023.

On September 12, 2023, claimant's supervisor issued claimant a verbal warning for selling soda to employees while on the employer's premises because it violated the employer's vendor contract with Pepsi. Despite receiving a warning, claimant continued selling soda to employees on the employer's premises. On September 28, 2023, claimant's supervisor issued claimant a final warning for this conduct.

On October 10, 2023, a client emailed claimant and asked her to send a Good Ranchers brand spiral ham sample. Claimant promptly found the product, created the shipping labels, and sent the product to the client. On October 22, 2023, the same client emailed claimant and asked her to send a second Good Ranchers brand spiral ham sample. Claimant had difficulty finding a Good Ranchers brand spiral ham sample, so she sent the client a Trader Joe's branded ham. Trader Joe's was a direct competitor of the client.

The next day, the client contacted the employer upset that it had received a Trader Joe's branded ham rather than a Good Rancher's branded ham. The employer investigated the allegation by reviewing the emails between claimant and the client as well as pictures of the product the client received. After confirming that claimant had sent the client the wrong product, the employer questioned claimant about the incident. During the interview, claimant acknowledged that she sent the wrong ham, but said that she had been confused about which product the client wanted her to send. Because claimant had correctly sent the client a Good Rancher's branded ham only thirteen days before, the employer concluded that claimant was lying about having been confused. The next day, the employer called and informed claimant that her employment was being terminated effective immediately due to continued unsatisfactory work performance after having received multiple warnings.

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

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct. Benefits are denied.

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. 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 Admin. Code r. 871-24.32(4) provides:

(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.

Iowa Admin. Code r. 871-24.32(8) provides:

(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 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). 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 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. 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). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988).

Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that

equals willful misconduct in culpability. *Lee v. Employment Appeal Bd.*, 616 N.W.2d 661 (Iowa 2000). A failure in job performance is not misconduct unless it is intentional. *Huntoon*, supra; *Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661 (Iowa 2000).

When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986). 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). Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990); however, "Balky and argumentative" conduct is not necessarily disqualifying. *City of Des Moines v. Picray*, (No. 85-919, Iowa Ct. App. Filed June 25, 1986).

Prior to claimant's termination, the employer coached and counseled claimant several times and issued claimant a verbal warning concerning her unsatisfactory work performance. Additionally, on September 28, 2023, the employer issued claimant a final written warning for refusing to follow the employer's instruction and stop selling soda on the employer's premises. Despite receiving these warnings, on October 22, 2023, the claimant either mistakenly or intentionally sent a competitor's product to a client. Even if claimant mistakenly sent the client the wrong product, claimant's repeated failure to accurately perform her job duties after having been warned is evidence of carelessness to such a degree of recurrence as to rise to the level of a deliberate disregard of the employer's interests. The employer discharged claimant for disqualifying, job related misconduct. Benefits are denied.

#### **DECISION:**

The November 13, 2023, (reference 01) unemployment insurance decision is affirmed. The claimant was discharged from employment due to disqualifying, job-related misconduct. Unemployment insurance benefits are 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.



---

Patrick B. Thomas  
Administrative Law Judge

---

December 28, 2023  
Decision Dated and Mailed

pbt/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:

**Iowa Employment Appeal Board  
6200 Park Avenue Suite 100  
Des Moines, Iowa 50321  
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:

**Iowa Employment Appeal Board  
6200 Park Avenue Suite 100  
Des Moines, Iowa 50321  
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.