

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

DAVID J CLEASBY

Claimant

APPEAL NO. 24A-UI-07950-JT

**ADMINISTRATIVE LAW JUDGE
DECISION**

RAND WORLDWIDE SUBSIDIARY INC

Employer

OC: 08/11/24

Claimant: Appellant (2)

Iowa Code Section 96.5(2)(a) & (d) – Discharge

STATEMENT OF THE CASE:

On September 6, 2024, David Cleasby (claimant) filed a timely appeal from the August 29, 2024 (reference 01) decision that disqualified him for benefits and that held the employer's account would not be charged for benefits, based on the IWD deputy's conclusion that the claimant was discharged for wanton carelessness in performing his work. Mr. Cleasby requested an in-person appeal hearing. After due notice was issued, an in-person appeal hearing was held on September 25, 2024 at the Council Bluffs IowaWORKS Center. Mr. Cleasby participated in person. Steven Ryan appeared on behalf of the employer by telephone. Exhibits 1, 2, A and B were received into evidence.

ISSUE:

Whether the claimant was discharged for misconduct in connection with the employment.

FINDINGS OF FACT:

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

David Cleasby (claimant) was employed by Rand Worldwide Subsidiary, Inc., d/b/a Rand IMAGINiT Technologies, as a full-time software development Project Manager until July 26, 2024, when Steve Ryan, Director of Software Management, discharged him from the employment. Mr. Cleasby began his employment with Rand in 1995 and worked as a Project Manager during the last 18 years of the employment. Mr. Ryan became Mr. Cleasby's supervisor in November 2023. Mr. Cleasby worked from his home in rural Pottawattamie County Iowa, within commuting distance of Omaha. Mr. Ryan is based in Kentucky. Performance reviews provided by the employer indicate the employer deemed Mr. Ryan to have consistently performed his Project Manager duties in a satisfactory or more-than-satisfactory manner prior to Mr. Cleasby coming under Mr. Ryan supervisory authority. The most recent such performance review, completed by Mr. Cleasby's previous supervisor, is dated January 2, 2024.

As a Project Manager, Mr. Cleasby was responsible for managing 15 to 20 active software development projects, each at a different point in the development process. Mr. Cleasby had several duties as Project Manager. These included communicating with the various interested parties and providing status updates on projects. Mr. Cleasby did not supervise or control the various interested parties. After Mr. Ryan became Mr. Cleasby's supervisor, Mr. Ryan commenced implementing a project delivery template to be used to track and communicate status of projects. Mr. Cleasby had for several years used a project board tracking system that had served him well for tracking project status and communicating with customers regarding project status. Mr. Ryan's concern that Mr. Cleasby continued to rely upon his project board system rather than transitioning to using the new template system implemented by Mr. Ryan was a factor in the discharge decision.

At the time Mr. Ryan discharged Mr. Cleasby from the employment on July 26, 2024, he told Mr. Cleasby the reason for the discharge was Mr. Cleasby's lack of ability to conform to a new project delivery framework. On July 25, 2024, Mr. Ryan drafted a 17-bullet point email regarding Mr. Cleasby's alleged performance deficiencies that he shared with his own supervisor and with the human resources representative, Jon Nichols, who assisted with discharging Mr. Cleasby from the employment. The employer did not share the document with Mr. Cleasby at or prior to the time of discharge. Prior to the discharge, Mr. Cleasby has not received any warnings or discipline and was unaware that his employment was in jeopardy.

The employer cites as triggering concerns two clients' escalating concerns in July 2024 about Mr. Cleasby's performance as the project manager for their project. Mr. Ryan had implemented a streamlined process for clients to use to bypass Mr. Cleasby and escalate their concerns to Mr. Ryan. On July 24, 2024, client Automatic Systems requested a new project manager and asserted that Mr. Cleasby had not been sufficiently clear regarding their project plan or status. Mr. Cleasby was aware that the client had concerns and had been working with other interested parties to address those concerns. On July 15, 2024, client State Window had expressed general dissatisfaction with Mr. Cleasby's work as project manager and requested a different project manager. In mid-May 2024, Mr. Cleasby inherited the State Window project from a colleague at the time the colleague left her employment with Rand. The project was in the final testing stages, when the client uncovered a software bug that would require further work. The client had by that time used the allotted number of Rand project hours and further work was awaiting contractual agreement and approval of additional project hours.

The employer cites Mr. Cleasby's purported delay in responding to email messages sent on May 20 and June 5, 2024. Mr. Cleasby prioritized other duties and responded to the email messages as soon as he was able, on May 22 and June 6, 2024 respectively.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(2)(a) and (d) provides as follows:

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.

...

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 results 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 license, 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.

See also Iowa Admin. Code r. 871-24.32(1)(a) (repeating the text of the statute).

The employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See *Lee v. Employment Appeal Board*, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See *Gimbel v. Employment Appeal Board*, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

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

of employment must be based on a current act. See Iowa Admin. Code r.871 24.32(8). In determining whether the conduct that prompted the discharge constituted a "current act," the administrative law judge considers the date on which the conduct came to the attention of the employer and the date on which the employer notified the claimant that the conduct subjected the claimant to possible discharge. See also *Greene v. EAB*, 426 N.W.2d 659, 662 (Iowa App. 1988).

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. See 871 IAC 24.32(4).

The evidence in the record establishes a July 26, 2024 for no disqualifying reason. The weight of the evidence establishes that Mr. Cleasby performed his Project Manager work duties in good faith and to the best of his ability, but not to the satisfaction of the new supervisor. The evidence establishes no knowing and intentional violation of employer work rules, and no careless or negligent performance of work duties. Mr. Cleasby is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits.

DECISION:

The August 29, 2024 (reference 01) decision is REVERSED. The claimant was discharged on July 26, 2024 for no disqualifying reason. The claimant is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged.



James E. Timberland
Administrative Law Judge

October 3, 2024
Decision Dated and Mailed

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
6200 Park Ave Suite 100
Des Moines, Iowa 50321
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>.

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
6200 Park Ave Suite 100
Des Moines, Iowa 50321
Fax: (515)281-7191
Online: 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 está en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

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.