

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

ERIC WELCH
Claimant

APPEAL 24A-UI-07716-DZ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CF INDUSTRIES EMPLOYEE SERVICES
Employer

**OC: 07/28/24
Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

Eric Welch, the claimant/appellant,¹ appealed the Iowa Workforce Development (IWD) August 14, 2024 (reference 01) unemployment insurance (UI) decision. IWD denied Mr. Welch REGULAR (state) UI benefits because IWD concluded the employer discharged him from employment on June 26, 2024 for violating a known company rule. On August 29, 2024, the Iowa Department of Inspections, Appeals, and Licensing (DIAL), UI Appeals Bureau mailed a notice of hearing to Mr. Welch and the employer for a telephone hearing scheduled for September 17, 2024.

The administrative law judge held a telephone hearing on September 17, 2024. Mr. Welch participated in the hearing personally. The employer participated in the hearing through Emily Ehlers, human resources manager. The administrative law judge admitted Department's Exhibit 1 and Claimant's Exhibit A as evidence.

The administrative law judge concludes Mr. Welch appealed on time, but he is not eligible for REGULAR (state) UI benefits based on how his job ended with this employer.

ISSUE:

Did Mr. Welch appeal on time?

Did the employer discharge Mr. Welch from employment for disqualifying, job-related misconduct?

FINDINGS OF FACT:

The decision in this case rests, in large part, on the credibility of the witnesses because neither party submitted any evidence beyond Mr. Welch's statements in his appeal letter and the parties' testimony in the hearing. It is the duty of the administrative law judge as the trier of fact, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue.²

¹ Claimant is the person who applied for UI benefits. Appellant is the person or employer who appealed.

² *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007).

The administrative law judge may believe all, part or none of any witness's testimony.³ In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience.⁴ In determining the facts, and deciding what testimony to believe, the administrative law judge may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's conduct, age, intelligence, memory and knowledge of the facts; the witness's interest in the trial, and the witness's motive, candor, bias and prejudice.⁵

The following findings of fact show how the administrative law judge has resolved the disputed factual issues in this case. The administrative law judge assessed the credibility of the witnesses, considered the applicable factors listed above, and used his own common sense and experience.

Having reviewed the evidence in the record, the administrative law judge finds: IWD mailed the August 14, 2024 (reference 01) UI decision to Mr. Welch at his mailing address but did not include his unit number. The UI decision states that it becomes final unless an appeal is postmarked or received by the IWD Appeals Section by Saturday, August 24, 2024. If the appeal deadline falls on a Saturday, Sunday, or legal holiday, the appeal period is extended to the next working day. So, the appeal deadline was extended to Monday, August 26, 2024. Mr. Welch did not receive the decision in the mail. Mr. Welch waited and when he didn't hear anything from IWD he called on August 28. The IWD representative told him that he could appeal. Mr. Welch appealed online on August 28, 2024. The DIAL, UI Appeals Bureau received the appeal the same day.

The administrative law judge further finds: Mr. Welch began working for the employer on May 12, 2021. He worked as a full-time senior field safety specialist. His employment ended on June 20, 2024.

On May 15, the employer selected Mr. Welch for a random drug test. The employer's policy authorizes random drug tests and prohibits drug use at work and/or being under the influence of drugs at work. The policy provides that the employer will test for marijuana, among other drugs, and the employer may discipline an employee up to, and including, terminating their employment if an employee violates the policy. The employer updated this policy in November 2021 and emailed employees, including Mr. Welch, a copy of the policy. The policy is also available to employees on the employer's internal website.

Mr. Welch submitted a urine sample. The employer's third-party testing administrator split the urine into two samples and tested the primary sample. Sometime in late May, the medical review office (MRO) gave Mr. Welch the test results showing he tested positive for cannabinoids/THC. On, or about, May 30, Mr. Welch contacted Ms. Ehlers and told her he had tested positive on the drug test. Around the same time, the MRO told the employer about the test results.

Ms. Ehlers met with Mr. Welch and suspended him for the positive test result. Ms. Ehlers explained that Mr. Welch could have the split sample tested by a lab of his choice, or he could pay a fee and the employer's lab would conduct the test. Mr. Welch asked if he could take a new drug test that day. Ms. Ehlers denied his request. The employer gave Mr. Welch a letter

³ *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996).

⁴ *Id.*

⁵ *Id.*

in-person and sent him a letter via certified mail with his test results and explaining his options for retesting. On June 3, Mr. Welch signed a form authorizing the employer's lab to test the split sample.

On June 14, Mr. Welch attended an appointment with his personal doctor and took a drug test. This test came back negative. Mr. Welch's doctor told him that 800 mg of ibuprofen could cause a false positive marijuana drug test. On June 17, Mr. Welch sent Ms. Ehlers the negative drug test result from the test he took through his personal doctor. He also sent Ms. Ehlers information about drug interactions and how a person taking ibuprofen could test positive for marijuana. Ms. Ehlers told Mr. Welch that he should submit this information to the MRO.

On June 20, the lab informed the employer that it tested the split sample, and it came back positive for marijuana metabolite. The employer contacted Mr. Welch and terminated his employment.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes 1) Mr. Welch appealed on time, and 2) the employer discharged him from employment on June 20, 2024 for disqualifying, job-related misconduct.

Mr. Welch Appealed On Time

Iowa Code § 96.6(2) provides, in relevant part: “[u]nless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision.”

Iowa Admin. Code r. 871-24.35(1) provides:

2. Except as otherwise provided by statute or by division rule, any payment, appeal, application, request, notice, objection, petition, report or other information or document submitted to the division shall be considered received by and filed with the division:

- (2) If transmitted via the United States Postal Service on the date it is mailed as shown by the postmark, or in the absence of a postmark the postage meter mark of the envelope in which it is received; or if not postmarked or postage meter marked or if the mark is illegible, on the date entered on the document as the date of completion.

- (b) If transmitted via the State Identification Data Exchange System (SIDES), maintained by the United States Department of Labor, on the date it was submitted to SIDES.

- (c) If transmitted by any means other than [United States Postal Service or the State Identification Data Exchange System (SIDES)], on the date it is received by the division.

Iowa Admin. Code r. 871-24.35(2) provides:

2. The submission of any payment, appeal, application, request, notice, objection, petition, report or other information or document not within the specified statutory or

regulatory period shall be considered timely if it is established to the satisfaction of the division that the delay in submission was due to division error or misinformation or to delay or other action of the United States postal service.

The Iowa Supreme Court has declared that there is a mandatory duty to file appeals from representatives' decisions within the time allotted by statute, and that the administrative law judge has no authority to change the decision of a representative if a timely appeal is not filed.⁶ Compliance with appeal notice provisions is jurisdictional unless the facts of a case show that the notice was invalid.⁷

Mr. Welch did not receive the August 14, 2024 (reference 01) UI decision before the appeal deadline and, therefore, could not have appealed by the deadline. The notice provision of the decision was invalid. Mr. Welch appealed as soon as he knew about the decision. Mr. Welch appealed on time.

The Employer Terminated Mr. Welch's Employment on June 20, 2024 for Disqualifying Job-Related Misconduct, So He Is Not Eligible For REGULAR (State) UI Benefits

Iowa Code section 96.5(2)(a) and (d) provide, in relevant part:

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 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:

...

(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 *Franklin v. IDJS*, 277 N.W.2d 877, 881 (Iowa 1979).

⁷ *Beardslee v. IDJS*, 276 N.W.2d 373, 377 (Iowa 1979); see also *In re Appeal of Elliott* 319 N.W.2d 244, 247 (Iowa 1982).

Iowa Code section 96.5(14) provides:

14. Marijuana or controlled substance use in the workplace — disqualified.
 - a. For purposes of this subsection, unless the context otherwise requires:
 - (1) “Controlled substance” means the same as defined in section 124.101.
 - (2) “Marijuana” means the same as defined in section 124E.2.
 - b. If the department finds that the individual became separated from employment due to ingesting marijuana in the workplace, working while under the influence of marijuana, or testing positive for any other controlled substance, for which the individual did not have a current prescription or which the individual was otherwise using unlawfully, under a drug testing policy pursuant to section 730.5 or any other procedures provided by federal statutes, federal regulations, or orders issued pursuant to federal law.
 - c. 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.

The employer has the burden of proof in establishing disqualifying job misconduct.⁸ The issue is not whether the employer made a correct decision in separating Mr. Welch from employment, but whether he is entitled to unemployment insurance benefits.⁹ Misconduct must be “substantial” to warrant a denial of job insurance benefits.¹⁰

Testing under Iowa Code section 730.5(4) allows employers to test employees for drugs and/or alcohol but requires the employer “adhere to the requirements . . . concerning the conduct of such testing and the use and disposition of the results.” Iowa law allows drug testing of an employee. Testing shall include confirmation of initial positive test results. Iowa Code section 730.5(7)(j)(1) mandates that if a medical review officer (MRO) reports a positive test result to the employer, upon a confirmed positive drug or alcohol test by a certified laboratory, the employer must notify the employee of the test results by certified mail return receipt requested, and the right to obtain a confirmatory or split-sample test. For breathalyzer testing, initial and confirmatory testing may be conducted pursuant to the employer’s written policy. A policy shall include requirements governing breath testing devices, alcohol screening devices, and qualifications for administering personnel consistent with DOT rules. If an oral fluid sample is taken and results are received in the presence of the employee, this is considered a sufficient sample for split sample testing. The Iowa Supreme Court has held that an employer may not “benefit from an unauthorized drug test by relying on it as a basis to disqualify an employee from unemployment compensation benefits.”¹¹

In this case, the employer has met the requirements of Iowa Code section 730.5 and has established disqualifying, job-related misconduct on the part of Mr. Welch. Mr. Welch received a copy of employer’s policy, he was randomly tested via a certified testing facility, the drug screen was positive for cannabinoids/THC, the employer notified him of the test result by certified mail and offered him the option to have a second confirmatory test. The second confirmatory test

⁸ *Cosper v. Iowa Dep’t of Job Serv.*, 321 N.W.2d 6 (Iowa 1982).

⁹ *Infante v. Iowa Dep’t of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984).

¹⁰ *Newman v. Iowa Dep’t of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984).

¹¹ *Eaton v. Iowa Emp’t Appeal Bd.*, 602 N.W.2d 553, 557, 558 (Iowa 1999).

also came back positive. Mr. Welch's violation of the employer's drug policy constitutes misconduct. So, he is not eligible for REGULAR (state) UI benefits.

DECISION:

Mr. Welch appealed on time. The August 14, 2024 (reference 01) UI decision is AFFIRMED. The employer discharged Mr. Welch from employment on June 20, 2024 for disqualifying, job-related misconduct. Mr. Welch is not eligible for UI benefits until he has worked in and been paid wages for insured work equal to ten times his weekly UI benefit amount, as long as no other decision denies him UI benefits.



Daniel Zeno
Administrative Law Judge

September 23, 2024
Decision Dated and Mailed

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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 IA 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> 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 IA 50321
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.