

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

DANIEL D COVEYOU
Claimant

UNITED NATIONAL FOODS INC
Employer

APPEAL 23A-UI-09084-LJ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 08/20/23
Claimant: Respondent (1)

Iowa Code § 96.5(2)a – Discharge from Employment
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

On September 25, 2023, employer United National Foods Inc. filed an appeal from the September 13, 2023 (reference 01) unemployment insurance decision that allowed benefits based on a determination that he was dismissed on August 24, 2023 for no disqualifying reason. The parties were properly notified of the hearing. A telephonic hearing was held at 8:00 a.m. on Tuesday, October 17, 2023. Claimant Daniel D. Coveyou participated. Employer United National Foods Inc. participated through witnesses Kevin Anderson, Human Resources Manager; Tim McNall, Transportation Manager; Matt Davis, Transportation Supervisor; and Cheska Cruz, Unemployment Claims Specialist with Equifax. Jacqueline Jones with Equifax represented the employer. Employer's Exhibits E-3 and E-4 (acknowledgment of "Driver Accident Reporting" procedure) were received and admitted into the record. The administrative law judge took official notice of the administrative record.

ISSUE:

Was the claimant discharged from employment for any disqualifying, job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for this employer on July 19 2017. He worked full-time hours as a delivery driver. Claimant's employment ended on August 24, 2023, when the employer discharged him for failing to follow the accident-reporting policy.

Claimant was driving his work vehicle in Peoria, Illinois on August 22, 2023, when he accidentally rear-ended another vehicle. He and the driver of the other vehicle pulled over onto a side street and exchanged insurance information. Claimant also took pictures of the other driver's vehicle, and he took one picture of his work vehicle. Claimant did not consider calling the police or 911 at the time of the accident, as he would not have called them for such an accident in his personal vehicle.

When claimant returned to his motel, he contacted transportation supervisor Matt Davis via phone to report the accident. Claimant could tell from Davis's tone of voice that he was disappointed with the way claimant had handled the incident. During that conversation, it first occurred to claimant that he should have reported the accident earlier and should have called the police when he was still at the scene of the accident. Following that call, Davis spoke with McNall and entered a report into the employer's insurance system. McNall then spoke with the employer's Safety Director and Transportation Director for the Midwest.

Ultimately, the employer determined claimant should be discharged due to his failure to call 911 and the police after the accident. Claimant's failure to obtain a police report from the accident put the employer in jeopardy by not having a contemporaneous, neutral assessment of the accident scene and the injuries and not obtaining complete information for everyone involved in and affected by the accident.

The employer's safety policy requires a driver involved in an accident to immediately call 911 and notify emergency personnel and to notify the police if you are able to do so. (McNall testimony) This policy also requires a driver who has been involved in an accident involving another person and/or vehicle to immediately report that accident to a manager or supervisor, by cell phone if necessary. (McNall testimony)

The administrative record reflects that claimant has received unemployment benefits in the amount of \$2,142.00, since filing a claim with an effective date of August 20, 2023, for the three weeks ending September 30, 2023. The administrative record also establishes that the employer did not participate in the fact-finding interview because it did not receive advance notice of the fact-finding interview.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided claimant is otherwise eligible.

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 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 even 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:

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

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

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 focus is on deliberate, intentional, or culpable acts by the employee.

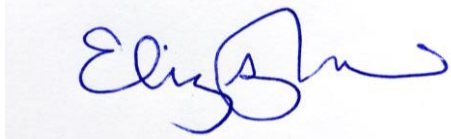
Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990). When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* Negligence does 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).

Here, the final incident that led to the employer discharging claimant was claimant failing to immediately report his rear-ending another vehicle to the employer and to 911 and the police. There is no evidence in the record that claimant's failure to report the accident from the scene was intentional. Claimant reported the accident as soon as he returned to his motel, and he collected information from the other driver involved and took pictures of the damage he did to document the accident. He simply failed to follow the employer's policy because he had forgotten the specific requirements of it. Claimant had never been warned for failing to follow this policy in the past. The employer has not established claimant was discharged for a deliberate act or omission constituting a material breach of his duties or obligations to the employer. Benefits are allowed.

As benefits remain allowed based on this separation, the issues of overpayment and chargeability are moot.

DECISION:

The September 13, 2023 (reference 01) unemployment insurance decision is affirmed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible. The issues of overpayment and chargeability are moot.



Elizabeth A. Johnson
Administrative Law Judge

October 20, 2023
Decision Dated and Mailed

LJ/jkb

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.

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**

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.