

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

BEVERLY J MOORE-HENDERSON
Claimant

FRIENDSHIP VILLAGE
Employer

APPEAL 23A-UI-06439-LJ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 05/28/23
Claimant: Appellant (2)**

Iowa Code § 96.5(2)a – Discharge from Employment

STATEMENT OF THE CASE:

On June 26, 2023, claimant Beverly J. Moore-Henderson filed an appeal from the June 21, 2023 (reference 01) unemployment insurance decision that denied benefits after a May 30, 2023 separation from employment. The parties were properly notified of the hearing. A telephonic hearing was held at 8:00 a.m. on Tuesday, August 15, 2023. Claimant Beverly J. Moore-Henderson personally participated. Employer Friendship Village participated through Chad Wagner, Director of Plant Services; Nick Harden observed the hearing but did not testify. Employer's Exhibits 1, 2, and 3 were received and admitted into the record without objection.

ISSUE:

Whether the claimant was separated for 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 in October 2022. Throughout her employment, she worked full-time hours as a bus driver. Claimant's employment ended on May 30, 2023, when the employer discharged her for causing two accidents with her work vehicle within a two-week period.

Claimant's position with the employer requires a commercial driver's license ("CDL"). She received training at the time she was hired, and she also received periodic training during her employment. Claimant was aware from the time she was hired that safely operating the bus was one of her core job expectations.

The final incident leading to the end of claimant's employment occurred on May 29, 2023. Claimant was driving her bus around to pick up garbage at the residents' homes that morning. One of the garbage bags fell and garbage began spilling out of the bag. Claimant leaned over to grab the bag and stop the spill, causing the bus to veer into a parked car and resulting in \$6,000.00 in total damage (Exhibit 3). Nothing spilling out of the bag was toxic or posed a danger to claimant, and she could have stopped her bus and then tended to the spill.

Claimant had caused an accident less than two weeks earlier, on May 17, 2023. She was stopped at a stop sign and a car was traveling along the cross-street. Claimant turned too early and hit the rear driver side corner of the car with her bus (Exhibit 2). She initially saw the car but then lost sight of it due to the bus's blind spot and the small size of the car. This accident caused \$2,000.00 total damage. When Wagner arrived at the scene and he spoke with the police officer who was called out to the accident, the officer told him that the accident was claimant's fault.

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.

Iowa Code section 96.5(2)(a) and (d) provide:

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...

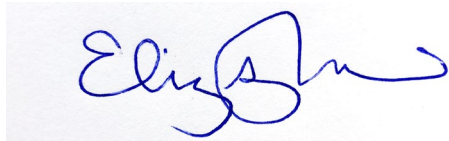
The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982).

A 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). Negligence alone does not constitute misconduct, and [the] misconduct legal standard requires more than reoccurring acts of negligence in disregard of the employer's interests." *Greenwell v. Emp't Appeal Bd.*, 879 N.W.2d 222, 228 (Iowa Ct. App. 2016). Misconduct is more than simply a disregard of the employer's interests; "it requires a '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.'" *Id.* (citing Iowa Admin. Code r. 871-24.32(1)(a) (emphasis in original)).

Here, the employer has established that claimant caused two accidents within a two-week period. Claimant accepted responsibility for her role in both of these accidents; her testimony during the hearing indicates she understands how to ensure they will not repeat in the future. The employer did not warn claimant after her first accident that any additional vehicle accidents caused by her would result in the end of her employment. Claimant's two accidents were akin to isolated incidents of poor judgment in the moment, rather than actual wrongful intent or evil design that amounts to any disregard of her employer's interests. The employer has not established claimant was discharged for disqualifying, job-related misconduct. Benefits are allowed, provided claimant is otherwise eligible.

DECISION:

The June 21, 2023 (reference 01) unemployment insurance decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.



Elizabeth A. Johnson
Administrative Law Judge

August 16, 2023
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:

**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.