

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

DANIELLE WHISENAND
Claimant

MC OF IOWA INC
Employer

APPEAL 25A-UI-00660-LJ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 12/15/24
Claimant: Appellant (2)**

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

STATEMENT OF THE CASE:

On January 24, 2025, claimant Danielle Whisenand filed an appeal from the January 21, 2025 (reference 01) unemployment insurance decision that denied benefits, determining employer MC of Iowa Inc. discharged her on December 10, 2024 for failing to follow instructions. The Unemployment Insurance Appeals Bureau mailed notice of the hearing on February 12, 2025. Administrative Law Judge Elizabeth A. Johnson held a telephonic hearing at 2:00 p.m. on Thursday, February 27, 2025. Claimant Danielle Whisenand personally participated. Employer MC of Iowa Inc. participated through witnesses Mike Cole, Owner; and Katie Cole, Office Manager. Employer's Exhibits 1 and 2 were received and admitted into the record without objection.

ISSUE:

Whether the employer discharged claimant from employment for disqualifying, job-related misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant Danielle Whisenand began employment with MC of Iowa Inc. most recently on June 10, 2024. She worked full-time hours for the company as a laborer performing cleaning duties. She last performed her job on December 11, 2024. Ms. Whisenand's employment ended on December 17, 2024, when the employer discharged her.

On December 11, Ms. Whisenand was working with a splint on her finger and was having difficulty performing some job tasks. She could not wring out towels well, due to the splint. The on-site supervisor noticed Ms. Whisenand struggling and laughed at her for working slowly. This person then reported Ms. Whisenand's issues to Mr. Cole.

Later into her shift, Ms. Whisenand had to leave work due to her child becoming ill at school. She informed the employer she had to leave work to pick up her child. When she reached out later that evening to ask about work the next day, the employer did not respond to assign her any work.

Ms. Whisenand reached out to the employer the evening of Sunday, December 15 to inquire about work the following day. Mr. Cole responded that he heard from the Microsoft site that Ms. Whisenand had “a broken finger or something” and could not wring out towels, so “you’re not gonna be able to work out there.” (Exhibit 1, page 19) He then recommended she keep working for “that lawyer,” if she was still doing so. (Exhibit 1, page 19) Ms. Whisenand responded that she was only working for the lawyer to help prepare Tanner’s court case. (Exhibit 1, page 19)

Ms. Whisenand reached out to the employer again the evening of Monday, December 16 to inquire about work the following day. Mr. Cole responded that he only had work available at Microsoft and could not send her to that job site because of her finger splint, her single incident of excessive cell phone use, her attendance, and alleged complaints. (Exhibit 1, page 20) He then wrote:

Unfortunately, I feel it’s in the company’s best interest if we part ways, as you have another job working for your lawyer and maybe those tasks will be easier for you to complete with all that you have going on personally, and now your broken finger. I don’t know that you’re the best fit for your position here as it seems to conflict with your personal life often. Please consider this your official termination and if you have any questions, please let me know.

(Exhibit 1, page 20)

The employer had issued Ms. Whisenand informal warnings via text message and verbally during her employment. Both Mr. Cole and Ms. Cole spoke with her about completing her timesheet, her cell phone use at work, her attendance, and her decision to have someone accompany her on a job.

REASONING AND CONCLUSIONS OF LAW:

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

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 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 Dept. 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 Dept. 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 Dept. of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). The focus is on deliberate, intentional, or culpable acts by the employee.

The Iowa Court of Appeals found substantial evidence of misconduct in testimony that the claimant worked slower than he was capable of working and would temporarily and briefly improve following oral reprimands. *Sellers v. Emp Appeal Bd.*, 531 N.W.2d 645 (Iowa Ct. App. 1995). 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. *Greenwell v. Emp. Appeal Bd.*, 879 N.W.2d 222, 228 (Iowa Ct. App. 2016) (quoting Iowa Admin. Code r. 871-24.32(1)(a) (current version at Iowa Admin. Code r. 871-24.24(1)). Negligence alone does not constitute misconduct. *Id.* (Iowa Ct. App. 2016) (citing *Lee v. Empl. Appeal Bd.*, 616 N.W.2d 661, 666 (Iowa 2000)). A single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dept. 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. Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988).

Iowa Admin. Code r. 871-24.24(3) provides:

(3) Report required. The claimant's statement and the 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.

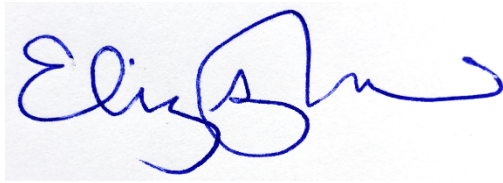
Iowa Admin. Code r. 871-24.24(8) provides:

(8) Suspension or disciplinary layoff. Whenever a claim is filed and the reason for the claimant's unemployment is the result of a disciplinary layoff or suspension imposed by the employer, the claimant is considered as discharged, and the issue of misconduct must be resolved. Alleged misconduct or dishonesty without corroboration is not sufficient to result in disqualification.

The employer stopped giving Ms. Whisenand any work assignments after December 11, 2024. Their decision was influenced by a combination of factors, including Ms. Whisenand's attendance history, her job performance history, her historical issues with timesheets, and her recent lengthy telephone call. However, the final incident triggering the end of Ms. Whisenand's employment was Ms. Whisenand coming to work wearing a finger splint. Neither of the Coles personally observed Ms. Whisenand's ability to perform her job while wearing the splint or spoke with her about the amount of time the splint would have to be worn. The splint issue was just the final straw after a short but problematic employment tenure. While the employer was free to discharge Ms. Whisenand for any reason, it has not established that it discharged her for disqualifying, job-related misconduct. Benefits must be allowed.

DECISION:

The January 21, 2025 (reference 01) unemployment insurance decision is reversed. The employer discharged claimant 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

March 4, 2025
Decision Dated and Mailed

lj/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**

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**

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.