

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

MOLLIE COX
Claimant

WORLDWIDE INTEGRATED SUPPLY CHAIN
Employer

APPEAL 24A-UI-00172-SN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 12/03/23
Claimant: Appellant (2)**

Iowa Code § 96.5(2)a – Discharge
Iowa Admin. Code r. 871-24.32(1)a – Discharge

STATEMENT OF THE CASE:

The claimant, Mollie Cox, filed an appeal from the December 29, 2023, (reference 01) unemployment insurance decision that denied benefits effective December 6, 2023, based upon the conclusion she was discharged for wanton carelessness. The parties were properly notified of the hearing. A telephone hearing was held on January 23, 2024, at 11:00 a.m. The claimant participated. The employer did not participate. Exhibits A and B were received into the record.

ISSUE:

Whether the claimant's separation from work is disqualifying?

FINDINGS OF FACT:

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

The claimant was employed full-time as an account manager from April 18, 2022, until this employment ended on December 6, 2023, when she was terminated. The claimant reported directly to Senior Logistics Account Manager Tanner Wittrock.

The employer is a freight brokerage. The claimant's position as an account manager was to call prospective wholesalers and arrange for freight pick-up and delivery of goods. The truckers tend to minimize the amount of time it will take them to get to an assignment. Sometimes the truckers take far longer to drop off goods than they are expected to which leads to complaints from a customer. Part of the claimant's job was to parse this information and get the contract without these issues.

In 2022, the claimant received an account that was dormant. The claimant was making more money than Mr. Wittrock in commissions. The commission was initially uncapped. Mr. Wittrock placed three additional employees on this account, which reduced the commission by \$25,000. The claimant complained to Mr. Wittrock that this seemed unfair, he had severely reduced her income less than a year before her termination.

On November 6, 2023, the claimant received a performance improvement plan (PIP) from the employer. The PIP said the claimant was expected to make 65 calls per day and to develop her carrier lines. The PIP said there would be a follow up meeting on November 20, 2023.

On November 7, 2023, a customer on the claimant's account complained to other staff that the trucks that were going to pick up her loads had not arrived. The claimant was not alerted to this complaint. Had the claimant been aware of the issue around the time of the email, she could have taken actions to remedy it. The claimant could have contacted the truckers and received a new estimated time of arrival.

On November 21, 2023, the claimant met with Mr. Wittrock for a one-on-one meeting. Mr. Wittrock told the claimant that she was meeting all the requirements of her position and to "keep on keeping on."

On November 30, 2023, the claimant volunteered to help another account. The claimant asked others on her team to cover her account while she was on this one. That account had just dropped six loads, meaning they could not find trucks to run these loads for the customer. The claimant was able to recover six loads for this account. Senior Accounts Manager Brayton Groate thanked the claimant for her work on this account.

On December 5, 2023, the claimant asked for an update regarding her progress on the PIP. A meeting with Mr. Wittrock was initially scheduled for December 6, 2023, at 7:45 a.m. The meeting's time and participants was changed numerous times. Ultimately, the meeting was scheduled for 3:00 p.m. on December 6, 2023, with Human Resources Manager Lindsey Rose and Logistics Project Manager Trevor Potter.

On December 6, 2023, Ms. Rose and Mr. Potter informed the claimant she would be terminated for having too many errors and not fulfilling the terms of the PIP. Although it was not specified, the claimant believes Ms. Rose and Mr. Potter were referring to the complaints on her account that were received by other staff on November 7, 2023, and November 30, 2023.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes claimant was discharged from employment for no disqualifying reason. Benefits are granted, provided she is otherwise eligible for benefits.

Iowa Code section 96.5(2)a provides:

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.

Iowa Admin. Code r. 871-24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being 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. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dept of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

Iowa Code section 96.5(2)b, c and d provide:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

b. Provided further, if gross misconduct is established, the department shall cancel the individual's wage credits earned, prior to the date of discharge, from all employers.

c. Gross misconduct is deemed to have occurred after a claimant loses employment as a result of an act constituting an indictable offense in connection with the claimant's employment, provided the claimant is duly convicted thereof or has signed a statement admitting the commission of such an act. Determinations regarding a benefit claim may be redetermined within five years from the effective date of the claim. Any benefits paid to a claimant prior to a determination that the claimant has lost employment as a result of such act shall not be considered to have been accepted by the claimant in good faith.

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:

- (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 result 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 licenses, 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.

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). 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). Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984).

Where an individual is discharged due to a failure in job performance, proof of that individual's ability to do the job is required to justify disqualification, rather than accepting the employer's subjective view. To do so is to impermissibly shift the burden of proof to the claimant. *Kelly v. Iowa Dept of Job Serv.*, 386 N.W.2d 552 (Iowa Ct. App. 1986).

Iowa Admin. Code r. 871-24.32(4) provides:

(4) Report required. The claimant's statement and 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.

The administrative law judge finds the employer failed to articulate a reason for the termination that was specific enough to meet the requirements of Iowa Admin. Code r. 871-24.32(4). Merely stating she was terminated for errors is not specific enough to fulfill this requirement.

Furthermore, the record contains no information suggesting the claimant intentionally worked poorly. The record does not even establish the claimant was negligent in one instance let alone to the extent that it was willful or wanton. While the claimant had some training and control over the signing of contracts with these truckers, it is unknown what caused the delay of delivery and so perhaps could not have even discovered this. Furthermore, the claimant was not given the customer complaint to attempt an effective response. *Cosper v. Iowa Dept of Job Serv.*, 321 N.W.2d 6 (Iowa 1982).

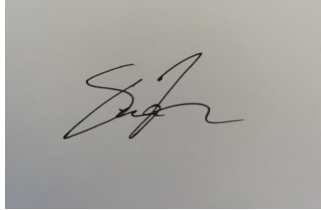
Iowa Admin. Code r.871-24.32(8) provides:

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

Furthermore, even if the errors that resulted in the complaint occurred due to wanton negligence, the record establishes that the claimant was not terminated until a month later. The employer likely knew about the complaint well before the claimant did. There is nothing in the record to support the idea that delay in the employer's termination was due to reasonable things like obtaining more information for an investigation. As a result, the employer cannot meet the requirements of Iowa Admin. Code r.871-24.32(8). Accordingly, no disqualification pursuant to Iowa Code § 96.5(2)a is imposed. Benefits are granted, provided she is otherwise eligible.

DECISION:

The December 29, 2023, (reference 01) unemployment insurance decision is REVERSED. The 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.

A rectangular box containing a handwritten signature in black ink. The signature is cursive and appears to read 'Sean M. Nelson'.

Sean M. Nelson
Administrative Law Judge II
Iowa Department of Inspections & Appeals
Administrative Hearings Division – UI Appeals Bureau

January 26, 2024
Decision Dated and Mailed

smn/rvs

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 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:

**Employment Appeal Board
6200 Park Avenue 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 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.