

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

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**DUSTIN J. STONEKING**  
Claimant

**STONEKING ENTERPRISES INC**  
Employer

**APPEAL 23A-UI-06222-CS-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 04/30/23  
Claimant: Appellant (5)**

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Iowa Code §96.5(2)a-Discharge/Misconduct  
Iowa Code §96.5(1)- Voluntary Quit  
Iowa Code § 96.4(3) – Ability to and Availability for Work

**STATEMENT OF THE CASE:**

On June 19, 2023, the claimant/appellant filed an appeal from the June 14, 2023, (reference 01) unemployment insurance decision that denied benefits based on claimant being discharged on April 21, 2023 for conduct not in the best interest of the employer. The parties were properly notified about the hearing. A telephone hearing was held on July 11, 2023. Claimant participated. Employer participated through owner, Nathan Stoneking. Office Manager, Belinda Moore, and Driver/Laborer, Ethan Rauch, testified on behalf of employer.

**ISSUES:**

- I. Was the separation a layoff, discharge for misconduct, or voluntary quit without good cause?
- II. Is the claimant able to and available for work?

**FINDINGS OF FACT:**

The decision in this case rests, at least in part, on the credibility of the witnesses. It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *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. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder 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 appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

After assessing the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge finds:

Claimant began working for employer as an employee on January 1, 2015. Claimant last worked as the full-time Chief Operating Officer. Claimant was separated from employment on April 21, 2023, when he was discharged.

Nathan Stoneking, hereinafter, "Nathan," and Dustin Stoneking, hereinafter, "claimant," are brothers. Nathan is the owner of the company and was primarily responsible for operating things in the field. Claimant was responsible for operating the office and handling the financial aspects of the business. Claimant had no ownership interest in the business and was strictly a salaried employee.

Throughout the years the business has struggled financially. From time to time claimant would take his personal funds or use his personal credit to keep the business in operation. Claimant did this with the intention of providing the business a loan and expected to be paid back. Through claimant's position, he was granted the right to issue checks on behalf of the company and the authority to use the company's credit cards.

At some point the parties had a discussion regarding the future of the business. Claimant expressed concern with the business' ability to continue due to the cost to keep the business going. The parties discussed Nathan selling the business or possibly closing it down once some legal issues were resolved.

At some point claimant had multiple discussions with different employees informing them that the business was bankrupt and that it would be in their best interest to start looking for a new job. This resulted in some employees leaving the employer.

At some point in March 2023 claimant and Ms. Moore reviewed the company's QuickBooks. Claimant was the administrator of the QuickBooks account. Ms. Moore kept a copy of the records. The records reflected loans owed to claimant.

In March 2023 claimant believed that Nathan blocked him from the employer's bank accounts and he became upset. In order to get Nathan's attention he decided to charge \$8,000.00 in amazon gift cards to the employer because he knew the bank would flag the transaction and require authorization before the transaction was allowed. Nathan became aware of the charge and requested the bank lock the company's debit card that was issued to claimant. Since claimant was locked from the employer's business accounts he was no longer able to perform the functions of his job. In return claimant locked the employer's QuickBooks account.

The next day claimant unlocked the QuickBooks account but it had limited function due to claimant restricting it as the administrator. Because claimant locked the QuickBooks account the employer was not able to operated his business as usual. The employer was not able to access client accounts and perform bids for customers. Eventually the necessary steps were taken for Nathan to take over the administrator function in QuickBooks.

On March 15, 2023, the claimant and Nathan had a meeting. Claimant informed the employer he was resigning according to their employee agreement. Claimant submitted two resignation letters to the employer. Under the agreement, it would be a six-month process for claimant to transfer his job responsibilities to his replacement. The six months would end on September 15, 2023.

Claimant also demanded that all the loans that he made to the business be repaid, along with other demands for compensation. The parties did not agree to the terms of claimant's resignation.

After the March 15, 2023 meeting, Nathan has taken control of the QuickBooks account. Nathan has become aware of some changes to the accounting by claimant that do not match the records Ms. Moore obtained prior to the account being locked. Nathan is in the process of auditing the business' financial accounts but at the time of the hearing does not have evidence claimant's actions were unauthorized or illegal. The parties dispute the amount of loans given to the business by claimant and the payments made on the loans.

On April 21, 2023, Nathan called claimant and informed him he was discharged. The employer listed multiple reasons for claimant's discharge. However, claimant was primarily discharged for locking claimant out of QuickBooks and informing employees they needed to find new jobs due to the business being bankrupt.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes as follows:

Iowa Code §96.5(1) provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

Iowa Admin. Code r. 871-24.25(38) provides:

Voluntary quit without good cause. In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(38) Where the claimant gave the employer an advance notice of resignation which caused the employer to discharge the claimant prior to the proposed date of resignation, no disqualification shall be imposed from the last day of work until the proposed date of resignation; however, benefits will be denied effective the proposed date of resignation.

A voluntary quitting means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer and requires an intention to terminate the employment. *Wills v. Emp't Appeal Bd.*, 447 N.W. 2d 137, 138 (Iowa 1989). A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980); *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992).

In this case, claimant tendered his written resignation to the employer with an effective date of September 15, 2023. In this case, claimant did voluntarily quit his employment effective

September 15, 2023. Since claimant was not allowed to continue working through September 15, 2023, the next issue that must be determined is whether the employer has met its burden of proof that the April 21, 2023 discharge was due to job-related misconduct.

Iowa Code section 96.5(2)d provides:

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:

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:

(3) Intentional damage of an employer's property.

(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.

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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

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.

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). "Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of benefits." *Lee v. Employment Appeal Bd.*, 616 N.W.2d 661, 665 (Iowa 2000).

In this case, the employer has met its burden establishing job-related misconduct. Claimant acknowledges that he intentionally locked the employer's QuickBooks account. The employer established that this impacted his ability to conduct business. This is an intentional act that damaged the employer's business. Furthermore, claimant deliberately told other employees that the business was going bankrupt and that they needed to find new jobs. This is information that claimant would be intimately familiar with and other employees would take seriously due to his position within the business. This also disrupts the employer's ability to perform work to keep the business in operation. This intentional conduct is disqualifying misconduct. Benefits are denied.

**DECISION:**

The June 14, 2023 (reference 01) unemployment insurance decision is modified with no change in effect. Claimant voluntarily quit employment without good cause attributable to the employer but was discharged from employment prior to the end of his resignation notice. The employer has established job-related misconduct. Unemployment insurance benefits are denied effective April 30, 2023 and continue until claimant has worked in and earned wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.



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Carly Smith  
Administrative Law Judge  
Unemployment Insurance Appeals Bureau

July 13, 2023  
Decision Dated and Mailed

**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  
4<sup>th</sup> 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 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.