

**IOWA DEPARTMENT OF INSPECTIONS AND APPEALS
ADMINISTRATIVE HEARINGS DIVISION, UI APPEALS BUREAU**

ZEIN M IBRAHIM

Claimant

APPEAL NO. 23A-UI-03805-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

JOHN DEERE COMPANY

Employer

OC: 03/12/23

Claimant: Respondent (2)

Iowa Code Section 96.5(2)(a) – Discharge for Misconduct

Iowa Code Section 96.3(7) - Overpayment

STATEMENT OF THE CASE:

On March 12, 2023, the employer filed a timely appeal from the April 3, 2023 (reference 01) decision that allowed benefits to the claimant, provided the claimant met all other eligibility requirements, and that held the employer's account could be charged for benefits, based on the deputy's conclusion that the claimant was discharged on March 14, 2023 for no disqualifying reason. After due notice was issued, a hearing was held on April 27, 2023. Zein Ibrahim (claimant) participated. Megan Luke, Employee Relations Manager, represented the employer. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant (DBRO). The administrative law judge took official notice of the fact-finding materials for the limited purpose of determining whether the employer participated in the fact-finding interview and, if not, whether the claimant engaged in fraud or intentional misrepresentation in connection with the fact-finding interview. The fact-finding materials were not available at the time of the hearing. The administrative law judge took official notice of relevant Iowa Clerk of Court records made available to the public at www.iowacourts.state.ia.us.

ISSUES:

Whether the claimant was discharged for misconduct in connection with the employment.

Whether the claimant was overpaid benefits.

Whether the claimant must repay overpaid benefits.

Whether the employer's account may be charged.

FINDINGS OF FACT:

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

Zein Ibrahim (claimant) was employed by John Deere Company as a full-time assembler at the employer's Paton, Iowa facility from August 2022 until March 16, 2023, when the employer discharged him from the employment. The claimant's regular work hours were 6:00 a.m. to 4:30 p.m., Monday through Thursday. The employer suspended the claimant on March 14, 2023.

Toward the end of the employment, the claimant periodically received medical evaluation and treatment at Greene County Medical Center in Jefferson in connection with a work-related shoulder injury. During this period, the claimant's ex-girlfriend, Alyssa Lombera, worked at Greene County Medical Center as a lab technician. There was no need for the claimant to have direct or indirect contact with Ms. Lombera in connection with receiving evaluation and/or treatment for his work-related injury.

In August 2022, an Iowa District Court judge entered a Domestic Abuse No Contact Order in response to Ms. Lombera's Petition for Relief from Domestic Abuse. See Webster County Case Number DACV322281. The Order prohibited the claimant from contacting the protected party, Ms. Lombera. Law enforcement served the No Contact Order on the claimant in August 2022. The No Contact Order will expire on August 9, 2023 unless it is renewed.

The employer discharged the claimant for two reasons. The employer discharged the claimant in response to receiving notice from Jefferson Police Department that the claimant had twice violated the Domestic Abuse No Contact Order in February 2023 while at Greene County Medical Center ostensibly for the purpose of receiving medical evaluation and/or treatment for his work-related shoulder injury. The violations occurred during the claimant's work hours, while the claimant was in pay status. The claimant had used the employer's vehicle to travel to and from the Greene County Medical Center and used the employer's vehicle in connection with the No Contact Order violations. The most recent violation occurred on February 27, 2023. Jefferson Police Department provided the employer with a police report setting forth the particulars of the No Contact Order violations. The employer also reviewed video surveillance that showed, in one instance, the claimant placing a note on the protected party's vehicle while it was parked at Greene County Medical Center and, in another instance, the claimant getting into the protected party's vehicle at Greene County Medical Center. The No Contact Order violations gave rise to criminal charges in Greene County. See Greene County Case Numbers SMCR015645 and SMCR015646. The No Contact Order violations prompted a discussion between Greene County Medical Center and the employer about the need to find a different medical provider for future evaluation and treatment of the claimant's work-related injury.

In making the decision to discharge the claimant, the employer also considered allegations made by the claimant's coworkers that the claimant had uttered threats directed at John Deere Company. The employer declines to identify the complaining coworkers. The parties making the allegations asserted the claimant had uttered threats directed at John Deere Company sometime during the period of February 27, 2023 and March 6, 2023. The employer does not have the specific date a threat was allegedly uttered. The reporting parties alleged the claimant told coworkers that if his employment was terminated, he would bring bombs or weapons to the John Deere facility.

The employer has a Code of Conduct policy, a Rules of Conduct policy, and a policy against violence. The employer asserts the claimant's conduct in connection with the No Contact Order violations and the alleged threat violated one or more of these policies. The Code of Conduct restricts use of company property to only those uses approved by Employee Relations personnel. For example, the claimant's authorization to use the employer's vehicle to get to his medical appointments would not extend to using the vehicle for other conduct, such as violating the No Contact Order. The Rules of Conduct policy prohibits a number of acts, but does not reference threats. The policy against violence included a requirement of civil conduct in the workplace and could reasonably be interpreted as prohibiting threats directed at the workplace. The claimant was all relevant times aware of the policies.

The claimant established an original claim for benefits that Iowa Workforce Development deemed effective March 12, 2023. This employer is a base period employer. IWD paid the claimant \$3,306.00 in benefits for six weeks between March 12, 2023 and April 22, 2023.

On March 29, 2023, an Iowa Workforce Development Benefits Bureau deputy held a telephonic fact-finding interview that addressed the claimant's separation from the employment. The claimant participated in the fact-finding interview. The IWD deputy documented the claimant's statement as follows:

Tuesday call i was being put under investigations, no details told not to come to work. Sherrifs deputy calls me tells me you would shoot the place up if something happened to my job I denied i let my dog out vehicle comes out the sherrif comes to me to search my property finds nothing,was found i was accused of breaking a no contact order, and making threat about deere and co. i read him the statement from equifax, he stated all of it is false.

The deputy was unable to reach the employer's representative by telephone. While the deputy's notes refer to a written statement from Equifax, Iowa Workforce Development has not made that statement available to the Appeals Bureau. The weight of the evidence indicates the claimant knowingly misrepresented material facts through his assertion of ignorance regarding the basis for the employer's investigation and through his denial of violation of the No Contact Order violations.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(2)(a) and (d) provides as follows:

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 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:

....

(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.

...

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

Discharge for misconduct.

(1) Definition.

- a. For the purposes of this rule, “misconduct” is defined as 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 a 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:

...
(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 this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See *Lee v. Employment Appeal Board*, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See *Gimbel v. Employment Appeal Board*, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

While past acts and warnings can be used to determine the magnitude of the current act of misconduct, a discharge for misconduct cannot be based on such past act(s). The termination of employment must be based on a current act. See Iowa Admin. Code r.871 -24.32(8). In determining whether the conduct that prompted the discharge constituted a “current act,” the administrative law judge considers the date on which the conduct came to the attention of the employer and the date on which the employer notified the claimant that the conduct subjected the claimant to possible discharge. See also *Greene v. EAB*, 426 N.W.2d 659, 662 (Iowa App. 1988).

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. See 871 IAC 24.32(4).

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 Ct. 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.*

The weight of the evidence in the record establishes a March 14, 2023 suspension and a March 16, 2023 discharge for misconduct in connection with the employment. The claimant intentionally attempted to mislead the administrative law judge through his testimony at the appeal hearing. The claimant knowingly and falsely asserted the No Contact Order was not based on an allegation of domestic abuse. It clearly was based on an allegation of domestic abuse and the claimant clearly knew his statement to the contrary was false when he uttered it. The claimant knowingly and falsely asserted in his testimony that nothing became of the alleged No Contact Order violations upon which the discharge was in part based and that he was merely waiting for the No Contact Order to expire. Criminal charges based on the no contact order violations are pending in Greene County. The claimant clearly knew his statement to the contrary was false when he uttered it.

The weight of the evidence establishes the claimant twice engaged in criminal conduct, the No Contact Order violations, during work hours, while he was in paid status, and while he was using the employer's property. The claimant's actions demonstrated an intentional and substantial disregard of the employer's interests and violated multiple reasonable and uniformly enforced rules. A reasonable person would conclude the No Contact Order violations on company time substantially and unjustifiably endangered the personal safety of the protected party. The claimant's conduct led to the employer having to become part of the law enforcement response to the conduct. The claimant's conduct led to the employer having to explore alternative arrangements regarding the claimant's medical care. The claimant's misconduct constituted a "current act." The most recent conduct occurred on February 27, 2023. The conduct subsequently came to the employer's attention. The employer suspended the claimant within nine regular work days following the most recent misconduct and discharged the claimant within 11 work days after the most recent misconduct.

The employer presented insufficient evidence to prove the claimant uttered threats against the workplace or the employer. The employer had the ability to present significantly more direct and satisfactory evidence regarding the alleged threat but elected to withhold such evidence from the appeal hearing.

Because the evidence in the record establishes a discharge for misconduct in connection with the employment, the claimant is disqualified for benefits until he has worked in and been paid wages for insured work equal to 10 times his weekly benefit amount. The claimant must meet all other eligibility requirements.

The unemployment insurance law requires benefits be recovered from a claimant who receives benefits and is later denied benefits even if the claimant acted in good faith and was not at fault. However, a claimant will not have to repay an overpayment when an initial decision to award benefits on an employment separation issue is reversed on appeal if two conditions are met: (1) the claimant did not receive the benefits due to fraud or willful misrepresentation, and (2) the employer failed to participate in the initial proceeding that awarded benefits despite reasonable opportunity to participate. In addition, if a claimant is not required to repay an overpayment because the employer failed to participate in the initial proceeding, the employer's account will be charged for the overpaid benefits. Iowa Code § 96.3(7)(a) and (b).

The claimant received benefits but has been denied benefits as a result of this decision. The claimant, therefore, was overpaid benefits. The claimant is overpaid \$3,306.00 in benefits for six weeks between March 12, 2023 and April 22, 2023. The available evidence indicates the employer had a reasonable opportunity to participate in the fact-finding interview but failed to satisfy the participation requirement. However, the evidence also indicates the claimant willfully misrepresented material facts in connection with the fact-finding interview. For this reason, the claimant is required to repay the overpaid benefits. The employer's account is relieved of liability for benefits, including liability for benefits already paid to the claimant.

DECISION:

The April 3, 2023 (reference 01) is REVERSED. The claimant was discharged on March 16, 2023 for misconduct in connection with the employer. The claimant is disqualified for unemployment benefits until he has worked in and been paid wages for insured work equal to 10 times his weekly benefit amount. The claimant must meet all other eligibility requirements. The claimant is overpaid \$3,306.00 in benefits for six weeks between March 12, 2023 and April 22, 2023. The claimant is required to repay the overpaid benefits. The employer's account is relieved of liability for benefits, including liability for benefits already paid to the claimant.



James E. Timberland
Administrative Law Judge

May 2, 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>.

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 está en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

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.