

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

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**KAYLA L JOHNSON**  
Claimant

**INNOVATIONS REAL ESTATE INC**  
Employer

**APPEAL 24A-UI-01483-SN-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 12/31/23  
Claimant: Respondent (4-R)**

Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Admin. Code r. 871-24.32(1)a – Discharge for Misconduct  
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment  
Iowa Admin. Code r. 871-24.10 – Recovery of Benefit Overpayment

**STATEMENT OF THE CASE:**

The employer, Innovations Real Estate Inc, filed an appeal from the February 1, 2024, (reference 02) unemployment insurance decision granted benefits based upon the determination the claimant was discharged, but misconduct was not shown. The parties were properly notified of the hearing. A telephone hearing was held on February 28, 2024, at 10:00 a.m. The claimant participated and testified. The employer participated through President Misty Darling. The employer was represented by Nathan A. Russell, attorney-at-law.

**ISSUES:**

Was the claimant discharged for disqualifying job-related misconduct?

Whether the claimant has been overpaid benefits? Whether the claimant is excused from repayment of benefits due to the employer's non-participation?

**FINDINGS OF FACT:**

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

The claimant worked as a full-time executive assistant from December 12, 2022, until she separated from employment on December 29, 2023, when she quit.

The employer is owned by Misty Darling. She is also its president. Her ex-husband, Keith Soldwisch, used to work for the employer, but they have since been divorced. As part of the divorce, Mr. Soldwisch agreed he would not solicit personnel or clients from the employer.

In November 2023, Mr. Soldwisch was getting married in Colorado. The claimant and her husband, Sumner Johnson, attended the wedding. The claimant provided decorations for the wedding. At that time, Ms. Johnson discussed leaving the employer to work for Mr. Soldwisch's

company, Zealty Home Advisors. Mr. Sumner was dissatisfied with the commissions he was receiving from the employer.

On December 29, 2023, Mr. Johnson sent his resignation to Ms. Darling. That same day, Ms. Darling spoke with the claimant about whether Mr. Johnson's resignation would impact her employment with the employer. The claimant said she did not know. Ms. Darling asked the claimant if Mr. Johnson was going to a competing broker. The claimant did not offer any specifics about Mr. Johnson's plans. The claimant said that she and her husband needed to do what was best for their family because they were having a hard time making ends meet. Ms. Darling emphasized that she believed it would be a conflict of interest for Mr. Johnson to work for a competing broker. Ms. Darling sent the claimant home that day. She asked the claimant to talk to Mr. Johnson to get him to reconsider his resignation. After the conversation, the claimant packed up most of her things. The claimant already had an offer to work for Zealty Home Advisors and she did not have any interest in convincing her husband of changing his plans.

On December 30, 2023, Ms. Darling noticed that most of the claimant's items were missing from her desk. Believing that to signal the claimant's resignation, Ms. Darling said she accepted both the claimant and Mr. Johnson's resignations. The claimant told Ms. Darling that she believed she had been terminated.

On January 2, 2024, the claimant began working for Zealty Home Advisors with her husband. The employer provided screenshots from a business page on Facebook dated January 10, 2024, describing them as a "dynamic husband and wife team." (Exhibits A and E) Mr. Johnson's license was transferred to Zealty Home Advisors later that day. The employer provided a copy of a screenshot from the Iowa Professional Licensing page. (Exhibit C)

The claimant is still working for Zealty Home Advisors.

The following section of the findings of fact display the findings necessary to resolve the overpayment issue:

The claimant has received \$4,662.43 in unemployment insurance benefits after separating from the employer.

On January 19, 2024, Iowa Workforce Development sent a notice of fact-finding to the parties informing them of a fact-finding interview on January 31, 2024. The employer participated at the fact-finding interview stage through Misty Darling.

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

The administrative law judge concludes the claimant voluntarily left her employment to accept employment elsewhere. The overpayment issue is moot, at least as it concerns the disqualifying effect of the claimant's separation.

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, reviewing the exhibits submitted by the parties, considering the applicable factors listed above, and using his own common sense and experience, the administrative law judge finds the employer's version of events to be more credible than the claimant's recollection of those events.

This is not a termination case because Ms. Darling never told the claimant she had been terminated. Ms. Darling raised concerns about the claimant's continued employment with the employer. The administrative law judge finds these concerns to be prescient. He does not believe the claimant's allegation that she miraculously found employment on New Year's Day without any deliberation or offer ahead of time. He finds the claimant's response to Ms. Darling's question about her future with the employer to be an implicit concession she had unstated plans to leave.

The administrative law judge will now analyze the circumstances regarding the claimant's voluntary resignation.

Iowa Code section 96.5(1)a provides:

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

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. But the individual shall not be disqualified if the department finds that:

a. The individual left employment in good faith for the sole purpose of accepting other or better employment, which the individual did accept, and the individual performed services in the new employment. Benefits relating to wage credits earned with the employer that the individual has left shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Iowa Admin. Code r. 871-24.28(5) provides:

Voluntary quit requalifications and previously adjudicated voluntary quit issues.

(5) The claimant shall be eligible for benefits even though the claimant voluntarily quit if the claimant left for the sole purpose of accepting an offer of other or better employment, which the claimant did accept, and from which the claimant is separated, before or after having started the new employment. The employment does not have to be covered employment and does not include self-employment.

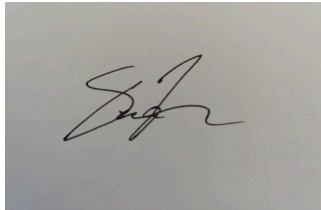
Even though the separation was without good cause attributable to the employer and would, standing alone, disqualify the claimant from receiving benefits, the claimant did leave in order to accept other employment and did perform services for the subsequent employer. Accordingly, benefits are allowed, provided the claimant is otherwise eligible for benefits.

**DECISION:**

The February 1, 2024, (reference 02), decision is MODIFIED IN FAVOR OF THE APPELLANT. The claimant voluntarily left her employment to accept other employment. Benefits are allowed, provided the claimant is otherwise eligible. The account of the employer (account number 506880-000) shall not be charged. The benefits will be paid by the Unemployment Compensation Fund.

**REMAND:**

The administrative law judge is remanding to the Benefits Bureau the issue regarding whether the claimant is still entitled to unemployment given her continuing employment with Zealty Home Advisors that began immediately after her separation from the employer.



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

March 5, 2024  
Decision Dated and Mailed

smn/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:

**Employment Appeal Board  
6200 Park Avenue Suite 100  
Des Moines, Iowa 50321  
Fax: (515)281-7191  
Online: [eab.iowa.gov](http://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](http://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.