

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

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**NEAL D WALTON**  
Claimant

**NOODLES & COMPANY**  
Employer

**APPEAL 24A-UI-07347-LJ-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 07/21/24  
Claimant: Respondent (1)**

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Iowa Code § 96.5(2)a – Discharge from Employment  
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment

**STATEMENT OF THE CASE:**

On August 16, 2024, employer Noodles & Company filed an appeal from the August 12, 2024 (reference 01) unemployment insurance decision that allowed benefits, determining claimant Neal D. Walton was discharged from employment on July 16, 2024 for no disqualifying reason. The Unemployment Insurance Appeals Bureau mailed notice of the hearing on August 20, 2024. Administrative Law Judge Elizabeth A. Johnson held a telephonic hearing at 10:00 a.m. on Thursday, September 5, 2024. Claimant Neal D. Walton personally participated; claimant's girlfriend Selena Edmondson acted as his representative. Employer Noodles & Company participated through Kourtney Frisone, General Manager (Waukee). Employer's Exhibits 1, 2, 3, 4, 5, 6, and 7 were received and admitted into the record over claimant's relevance objection. The administrative law judge took official notice of the administrative record.

**ISSUE:**

Whether claimant was discharged from employment for any disqualifying reason.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant Neal "Donnie" Walton began working for Noodles & Company in February 2024. He worked full-time hours as a shift manager. Claimant's employment ended on July 12, 2024, when the employer discharged him.

Frisone issued claimant his discharge paperwork, but claimant refused to sign the document because he disagreed with it. The document stated that claimant was discharged for "leaving shift unattended by MOD without shift transference with PM manager." (Exhibit 1) Current assistant district manager Ryan Householder also signed the document, though he was not present for claimant's discharge.

On July 5, claimant was working from 8:00am until 2:00pm and was scheduled as a line worker. His coworker Kate was the manager on duty ("MOD") and was scheduled from 8:00am until 4:00pm. Kate had worked for the employer for several months, and she was a manager throughout her employment. Sometime before claimant left at 2:00pm, Householder (a shift manager at the time) called the restaurant and spoke with Kate, as she was the MOD that day.

Householder told Kate that he would be late coming in that day. Claimant left his shift at 2:00pm. He does not know what time Householder arrived or Kate left, as he had already departed when those events occurred.

Managers are able to do things that regular employees cannot do, including ring up employee meals, enter catering orders, process refunds, and give discounts. The employer has a policy that one manager cannot leave their shift before the next manager arrives.

Claimant opened the claim for unemployment insurance benefits effective July 21, 2024. He has filed four weekly continued claims for benefits, most recently for the week ending August 17, 2024. He has received benefits in the amount of \$1,585.00. Iowa Workforce Development held a fact-finding interview at 8:20am on August 9, 2024. The employer did not participate in the fact-finding interview.

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

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he 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. 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.

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 Dep't 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 Dep't 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 Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). The focus is on deliberate, intentional, or culpable acts by the employee.

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

(4) 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.

It is the duty of the administrative law judge, as the trier of fact, 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 evidence you believe; 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 findings of fact show how I have resolved the disputed factual issues in this case. I assessed the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using my own common sense and experience. Claimant and Frisone presented two opposing versions of events: while Frisone alleged he was the manager on duty and left before his replacement arrived, claimant maintains Kate was the manager that day and he was merely working the line. Neither party offered the schedule at issue as an exhibit, and the employer is the party who would continue to have access to that schedule. What I find most significant is that Frisone did not refute any of claimant's statements when offered the opportunity for rebuttal. While I did not necessarily believe that claimant's prior write-up was altered from its original form as claimant testified, I did believe claimant's testimony that he did not speak with Householder on July 5 because he was not the MOD that day. When Householder called the restaurant, he spoke with Kate because Kate was the person in charge. Frisone did not challenge this; in fact, she agreed that when Householder called, he spoke with Kate. I find it reasonable to conclude that Householder would have asked to speak with the MOD when he called, either by position or by name.

The employer carries the burden to prove that an employee was discharged for disqualifying, job-related misconduct. While it is free to discharge an employee for any reason or no reason

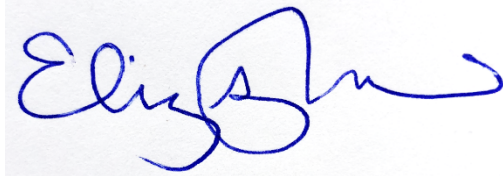
at all, provided that reason is not illegal or contrary to public policy, it will bear the responsibility for funding unemployment insurance benefits if it discharges that employee for a reason other than misconduct under the law. Here, there is not sufficient credible evidence to conclude that the employer discharged claimant for any disqualifying reason. Benefits must remain allowed.

Because benefits remain allowed, the issues of overpayment and chargeability are moot.

**DECISION:**

The August 12, 2024 (reference 01) unemployment insurance decision is affirmed. The employer discharged claimant from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible.

The issues of overpayment and chargeability are moot.



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Elizabeth A. Johnson  
Administrative Law Judge

September 9 2024  
Decision Dated and Mailed

lj/te

**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.