

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

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**DAVID THALACKER**  
Claimant

**APPEAL 23A-UI-07994-PT-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**LIGHTEDGE SOLUTIONS LLC**  
Employer

**OC: 07/23/23  
Claimant: Appellant (2)**

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Iowa Code § 96.5(2)a – Discharge

**STATEMENT OF THE CASE:**

Claimant filed an appeal from a decision of a representative dated August 10, 2023, (reference 01) that held claimant ineligible for unemployment insurance benefits after a separation from employment. After due notice, a hearing was held on September 5, 2023. Claimant participated personally and was represented by Attorney Marlon Mormann. The employer was represented by Attorney Paxton Williams and participated through Vice President of Human Resources Jody Gehl, Manager Ashley Shaw, and Employee Phil Peterson. Employer's Exhibits A through I were admitted into evidence. The administrative law judge took official notice of the administrative record.

**ISSUE:**

Whether the claimant was discharged for disqualifying, job-related misconduct?

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for the employer on July 24, 2023. The employer discharged claimant on July 24, 2023, for throwing his computer mouse and desk chair in violation of the employer's code of conduct and health and safety policies.

Claimant was employed as a full-time client experience engineer from October 1, 2020, until his employment with LightEdge Solutions LLC ended on July 24, 2023. As a client experience engineer, claimant was responsible for meeting with the employer's top clients, understanding and analyzing problems with the clients' work environments, and providing solutions for the problems. The employer has a written employee manual that prohibits threatening, aggressive, and inappropriate behavior in the workplace and destroying company property. Claimant received copies of, and was familiar with, the employer's work rules and policies.

In June and July of 2023, claimant's job duties and workload were causing him significant stress and claimant often did not sleep well at night. On July 21, 2023, claimant's supervisor unexpectedly called claimant into a virtual meeting. During the meeting, claimant's supervisor reprimanded claimant for a mistake he had made on a client's account and instructed claimant on how to handle similar situations in the future.

Claimant was upset by his supervisor's unexpected coach and counsel, so when the meeting ended, claimant logged off his computer and stood up to go for a walk. When claimant turned to leave his cubicle, he tripped over the base of his desk chair. In a moment of anger, claimant cursed, threw his mouse down on his desk, and then picked up his desk chair and slammed it down, causing the chair to slide out of his cubicle. Claimant's mouse broke, but the desk chair was undamaged.

There were no other employees in the cubicles near claimant, but the Vice President of Human Resources, Jody Gehl, saw claimant slam his desk chair from her office across the suite. Gehl ran over and asked claimant what happened. Claimant apologized to Gehl for slamming his chair and explained that he was upset because of what happened in the meeting with his supervisor. Gehl could see that claimant was agitated and she was concerned by his outburst, so she instructed claimant to go home for the rest of the day.

Later that day, claimant emailed his supervisor, explained what had happened, and apologized for his conduct. In the email, claimant took responsibility for his actions and informed his supervisor that he was seeking mental health counseling. On July 24, 2023, the employer called claimant into a virtual meeting and informed claimant that his employment was being terminated for throwing his computer mouse and desk chair in violation of the employer's code of conduct and health and safety policies. The employer gave claimant the option of resigning in lieu of termination. Claimant chose to resign effective immediately. Prior to claimant's separation from employment, claimant had never received any warnings or workplace discipline.

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

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

Iowa unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer. Iowa Code § 96.5(1). 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). However, if a claimant is compelled to resign when given the choice of resigning or being discharged, the separation is not considered a voluntary leaving. See Iowa Admin. Code r. 871-24-26(21). In this case, because the claimant was compelled to resign in lieu of termination of his employment, claimant did not voluntarily quit and his separation from employment must be analyzed as a discharge.

Iowa Code section 96.5(2)a 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:

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.

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(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.

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-related 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). 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 gravity of the incident, number of policy violations and prior warnings are factors considered when analyzing misconduct. The lack of a current warning may detract from a finding of an intentional policy violation. Disqualification for a single misconduct incident must be a deliberate violation or disregard of standards of behavior which employer has a right to expect. *Diggs v. Emp't Appeal Bd.*, 478 N.W.2d 432 (Iowa Ct. App. 1991).

"The use of profanity or offensive language in a confrontational, disrespectful, or name-calling context, may be recognized as misconduct, even in the case of isolated incidents or situations in which the target of abusive name-calling is not present when the vulgar statements are initially made. The question of whether the use of improper language in the workplace is misconduct is nearly always a fact question. It must be considered with other relevant factors, including the context in which it is said, and the general work environment." *Myers v. Emp't Appeal Bd.*, 462 N.W.2d 734 (Iowa Ct. App. 1990). Vulgar language in front of customers can constitute misconduct, *Zeches v. Iowa Dep't of Job Serv.*, 333 N.W.2d 735, 736 (Iowa Ct. App. 1983), as well as vulgarities accompanied with a refusal to obey supervisors. *Warrell v. Iowa Dep't of Job Serv.*, 356 N.W.2d 587, 589 (Iowa Ct. App. 1984).

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.*

The material facts in this case are not in significant dispute. To the extent that the parties disagree on the number of times claimant slammed his chair and whether the mouse claimant threw belonged to claimant or the employer, I give greater weight to the claimant's testimony, as it was both internally consistent and consistent with witness Phil Peterson's testimony that he heard only a single loud "bang" noise.

In this case, while claimant acknowledges that his conduct violated the employer's work rules, claimant credibly testified that his actions arose from a momentary lapse of judgment because he was upset and were not directed at others in a threatening or confrontational manner. Moreover, claimant took responsibility for his actions, apologized to both Gehl and his supervisor, and agreed to seek mental health counseling. As claimant had never previously been disciplined for similar conduct, the administrative law judge concludes that claimant's actions in this single instance do not evince such willful or wanton disregard of the employer's interests as is found in deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees. The employer has not met the burden of proof to establish that claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning. As a result, benefits are allowed, provided the claimant is otherwise eligible.

**DECISION:**

The August 10, 2023, (reference 01) unemployment insurance decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.



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Patrick B. Thomas  
Administrative Law Judge

September 14, 2023  
Decision Dated and Mailed

pbt/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  
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 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.