



Department of Inspections,
Appeals, & Licensing

Iowa Department of Inspections, Appeals, & Licensing
Administrative Hearings Division
6200 Park Avenue, Suite 100, East Entrance
Des Moines, IA 50321-1270

Appeal Decision

Claim Number:
[REDACTED]

Determination Number:
7460468

Appeal Filed By:
Jack Gubbels

Appeal Filed Date:
12/05/2025

Appeals Bureau Docket:
2025150338-AT



APPEALS DECISION ORDER

Mail Date: May 26, 2026

Appellant

Claimant/Job Seeker:
Claimant address:

Jack Gubbels
[REDACTED]

Appellee

Employer:
[REDACTED]

City Of Harlan
[REDACTED]

Social Security Number:

[REDACTED]

In regard to the appeal by Jack Gubbels:

DECISION/REMAND

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

Iowa Code § 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

The claimant/appellant, Jack Gubbels, timely appealed a December 5, 2025 IWD disqualifying separation determination, that denied benefits based upon claimant’s separation with employer/appellee, City of Harlan. After proper notice, a telephone hearing was conducted on February 26, 2026. The claimant was represented by Theodore Wonio, Attorney at Law. The employer was represented by Susan Bramman, Deputy City Clerk. After a short pre-hearing discussion regarding exhibits, the hearing was continued to May 22, 2026.

On May 22, 2026, a telephone hearing was conducted from Des Moines, Iowa with Administrative Law Judge, Jennifer Beckman. Claimant participated personally and was represented by Theodore Wonio, Attorney at Law.. The employer was represented by Susan Bramman, Deputy City Clerk. Gervas Mgonja, City Administrator, testified for the employer. Ashley Schleis, City Clerk, attended as an observer. Official notice was taken of the administrative records. Claimant Exhibit A and Employer Exhibits 1-8 were admitted over objections. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

Equal Opportunity:

Auxiliary aids and services are available upon request to individuals with disabilities. For deaf and hard of hearing, use Relay 711.



ISSUES:

Did the claimant voluntarily quit the employment with good cause attributable to the employer?

Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all the evidence in the record, this Administrative Law Judge finds: Claimant was employed for the City of Harlan from August 23, 2021 until October 29, 2025 when he was discharged for not following instructions. (Bramman/Mgonja testimony).

Claimant’s job duties included assisting with animal control and code enforcement such as responding to unmowed lawns, abandoned vehicles and building concerns. Claimant previously reported to the Fire Department until Mr. Mgonja became claimant’s manager in August 2025.

The undisputed evidence is claimant had no written warnings or final warning prior to discharge. Mr. Mgonja stated he verbally warned claimant by talking to him in “August or September” when he didn’t believe claimant was following up on citizen reported concerns. He stated he drove along with the claimant to visually inspect complaints made (Mgonja testimony).

Employer reported claimant was also discharged because he purchased a tv without authorization using employer’s credit card(Mgonja testimony). Claimant stated he purchased it, along with other items for his office after moving from the fire department to his new office. Claimant stated he purchased it to watch tv at work. When employer told claimant he could pay for the tv and remove it from the office or return it, claimant repaid the employer on approximately September 3, 2025 and kept the tv for personal use (Gubbels testimony).

Employer also reported claimant failed to attend a City Council meeting on October 21, 2025 (Mgonja testimony). Claimant had notified employer he would not be attending the meeting via text message and claimant testified he was removed from the meeting’s final agenda as a result.

Additionally, employer listed claimant’s decision to obtain outside part-time employment as a contributing reason for discharge (Mgonja testimony). The undisputed evidence is employer had no rule requiring permission from the employer to have outside employment. Claimant had taken over his family’s business of winterizing campers (Gubbels testimony/Employer Exhibit 7) There was no evidence presented that claimant was using employer resources for this other employment or that claimant was working for the other employer while on this employer’s clock. Rather, Mr. Mgonja stated the city received comments after claimant placed an online ad on social media (October 2, 2025) advertising the new company (Mgonja testimony, Employer Exhibit 7).

Claimant’s testimony wholly contradicted employer’s explanation for separation. Claimant stated separation occurred on October 29, 2025 when employer presented him a voluntary resignation letter initiated and prepared by the employer (Claimant Exhibit B). The letter noted “we accept your resignation” and noted claimant’s “uncertainty with future plans and commitment to the role with the city” (Claimant Exhibit B). When Claimant refused to sign it, employer prepared a second letter stating, separation was occurring because claimant refused to sign the voluntary resignation letter. Continuing work was not available.

REASONING AND CONCLUSIONS OF LAW:

As a preliminary issue, the administrative law judge concludes the claimant did not voluntarily quit the employment, but was discharged.

Iowa unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code §§ 96.5(1) and 96.5(2)a. The burden of proof rests with the employer to show that the claimant voluntarily left the employment. *Irving v. Empl. App. Bd.*, 883 N.W.2d 179 (Iowa 2016). A voluntary quitting of employment requires that an employee exercise a voluntary choice between remaining employed and terminating the employment relationship. *Wills v. Emp’t Appeal Bd.*, 447 N.W.2d 137, 138 (Iowa 1989); *Peck v. Emp’t Appeal Bd.*, 492 N.W.2d 438, 440 (Iowa Ct. App. 1992). It requires an intention to terminate the employment relationship accompanied by an overt act carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980).

In this case, the undisputed evidence is the employer, not the claimant initiated the employment ending on October 29, 2025, when it unilaterally prepared and presented claimant a voluntary resignation form (Claimant Exhibit B). When claimant refused to sign the document, employer prepared a second letter which stated separation would occur due to claimant’s failure to sign the voluntarily resignation letter (Claimant Exhibit C). It is clear claimant had no intention, nor the requisite overt act to initiate separation with this employer, and continuing work was not available. Therefore, the administrative law judge concludes the claimant was discharged. Accordingly, the burden of proof shifts to the employer to prove claimant’s separation was disqualifying. See *Iowa Code §96.6(2)*.



For the reasons that follow, the administrative law judge concludes the claimant was discharged but not due to job-related misconduct. Benefits are allowed.

Iowa law disqualifies individuals who are discharged from employment for misconduct from Iowa law disqualifies individuals who are discharged from employment for misconduct from receiving unemployment insurance benefits. *Iowa Code § 96.5(2)a*. They remain disqualified until such time as they requalify for benefits by working and earning insured wages ten times their weekly benefit amount. *Id.*

Iowa Code § 96.5(d) provides:

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:

- (1) Material falsification of the individual’s employment application.
- (2) Knowing violation of a reasonable and uniformly enforced rule of an employer.
- (3) Intentional damage of an employer’s property.
- (4) Consumption of alcohol, illegal or nonprescribed prescription drugs, or an impairing substance in a manner not directed by the manufacturer, or a combination of such substances, on the employer’s premises in violation of the employer’s employment policies.
- (5) Reporting to work under the influence of alcohol, illegal or nonprescribed prescription drugs, or an impairing substance in an off-label manner, or a combination of such substances, on the employer’s premises in violation of the employer’s employment policies, unless the individual is compelled to work by the employer outside of scheduled or on-call working hours.
- (6) Conduct that substantially and unjustifiably endangers the personal safety of coworkers or the general public.
- (7) Incarceration for an act for which one could reasonably expect to be incarcerated that result in missing work.
- (8) Incarceration as a result of a misdemeanor or felony conviction by a court of competent jurisdiction.
- (9) Excessive unexcused tardiness or absenteeism.
- (10) Falsification of any work-related report, task, or job that could expose the employer or coworkers to legal liability or sanction for violation of health or safety laws.
- (11) Failure to maintain any licenses, registration, or certification that is reasonably required by the employer or by law, or that is a functional requirement to perform the individual’s regular job duties, unless the failure is not within the control of the individual.
- (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.
- (13) Theft of an employer or coworker’s funds or property.
- (14) Intentional misrepresentation of time worked or work carried out that results in the individual receiving unearned wages or unearned benefits.

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 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. IDJS*, 364 N.W.2d 262 (Iowa 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. IDJS*, 425 N.W.2d 679 (Iowa 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 Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984). 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).

Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp. Appeal Bd.*, 423 N.W.2d



211, 213-14 (Iowa Ct. App. 1988). In this case, the employer offered multiple, conflicting explanations for claimant's discharge. The written evidence presented shows employer initiated separation because claimant had "uncertainty with future plans and commitment to the role with the city" (Claimant Exhibit B). The employer followed up by discharging claimant for failing to sign the above document as a voluntary quit (Claimant Exhibit). Mr. Mgonja testified claimant bought a tv using the company credit card and paid the employer back almost two months prior to separation.

Mr. Mgonja also verbally warned the claimant in "August or September" for not doing his job duties, but allowed him to continue working for several months without issuing any formal discipline or telling the claimant his job was in jeopardy. In the absence of willful or deliberate conduct, an employee is entitled to fair warning that the employer will no longer tolerate certain performance and conduct. Without fair warning, an employee has no reasonable way of knowing that there are changes that need to be made in order to preserve the employment. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given. Training or general notice to staff about a policy is not considered a disciplinary warning.

Additionally, employer presented evidence claimant was working part-time outside of employer. Employer explicitly stated this did not violate any rule, and no evidence was presented that claimant was using employer's resources or was on the clock as he performed work for Shady Acres repairs (Employer Exhibit 7). The post regarding Shady Acres was almost one month prior to claimant's discharge.

Iowa Admin. Code r. 871-24.24: 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. 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).

Simply put: The claimant in this case has failed to establish a current, final act of misconduct. The question before the administrative law judge in this case is not whether the employer has the right to discharge this employee, but whether the claimant's discharge is disqualifying under the provisions of the Iowa Employment Security Law. While the decision to terminate the claimant may have been a sound decision from a management viewpoint, the employer did not present sufficient, persuasive evidence that claimant engaged in job-related misconduct. As a result, employer has not met the burden of proof to establish that claimant engaged in misconduct that would disqualify him from benefits. Accordingly, benefits are allowed provided the claimant is otherwise eligible.

The parties are reminded that under Iowa Code § 96.6-4, a finding of fact or law, judgment, conclusion, or final order made in an unemployment insurance proceeding is binding only on the parties in this proceeding and is not binding in any other agency or judicial proceeding.

DECISION:

The December 5, 2025 IWD disqualifying separation determination is REVERSED. The claimant was discharged, but not for disqualifying job-related misconduct. Benefits are allowed, provided he is otherwise eligible.



Jennifer BECKMAN

Administrative Law Judge

Iowa Department of Inspections, Appeals, & Licensing

Administrative Hearings Division

Unemployment Insurance Appeals Bureau

Please see the last page of this document for important information about reopening the appeal and further appeal rights.



INSTRUCTIONS FOR FILING AN APPEAL

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, IA 50321
Fax: (515)281-7191
Online: IowaWORKS account

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. A reference to the decision from which the appeal is taken.
2. That an appeal from such decision is being made and such appeal is signed.
3. 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 ##WORKFORCECOMMISSIONFULLNAMENONACRONYM##. 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 the 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.



Babel Notice – Claim and Appeal Information

Aviso: Aviso: Documento De Beneficios Del Seguro De Desempleo
Y Información De Apelación

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This document contains important information about your unemployment compensation rights, responsibilities and/or benefits. It is critical that you understand the information in this document. **DEADLINE FOR APPEAL:** If you disagree with this determination or decision, you must file an appeal before the deadline noted in this document. **IMMEDIATELY:** If needed, call 866-239-0843 for assistance in the translation and understanding of the information in the document(s) you have received.

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上诉截止日期：如果您不同意本裁定或决定，您必须在本文件所载截止日期前提出上诉。**立即：**如果需要，请拨打866-239-0843，可获得帮助，以利您翻译和理解所收到的文件中的信息。

IMPORTANT!

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