

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

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**TROY D CAVIL**  
Claimant

**DES MOINES IND COMMUNITY SCH DIST**  
Employer

**APPEAL 24R-UI-02129-AR-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 10/22/23  
Claimant: Appellant (2)**

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Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Code § 96.5(1) – Voluntary Quitting

**STATEMENT OF THE CASE:**

On December 15, 2023, the claimant filed an appeal from the November 15, 2023, (reference 01) unemployment insurance decision that denied benefits based on the determination that claimant voluntarily quit employment without a showing of good cause attributable to the employer. A telephone hearing was held on January 8, 2024, for appeal numbers 23A-UI-11780-AR-T and 23A-UI-11781-AR-T. Claimant, Troy D. Cavil, participated, and was represented by attorney, Bryant Engbers. Employer, Des Moines Independent Community School District, participated through Benefits Specialist Rhonda Wagoner and Personnel Manager Claudia Young. The administrative law judge fully developed the record as to both the timeliness issue and the separation issue, but issued a decision based on timeliness. Claimant appealed the decision of the administrative law judge to the Employment Appeal Board (EAB).

On February 22, 2024, the EAB reversed the decision on timeliness and remanded the matter to the UI Appeals Bureau for a decision on the substantive issues. When it did so, the EAB noted that, if the administrative law judge determined that no additional testimony was necessary in order to issue a decision, no hearing need be held. After due notice was issued, a hearing was scheduled to be held by phone on March 19, 2024. Appeal numbers 24R-UI-02129-AR-T and 24R-UI-02130-AR-T were scheduled to be heard together. Claimant and his attorney appeared. Cathy McKay appeared on behalf of the employer. The administrative law judge determined that no additional testimony was necessary in order to issue a decision, and no hearing was held. This decision is based on the record developed in appeal numbers 23A-UI-11780-AR-T and 23A-UI-11781-AR-T.

**ISSUES:**

Did the claimant voluntarily quit employment without good cause attributable to the employer, or was the claimant discharged for disqualifying job-related misconduct?

## **FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on August 19, 2019. Claimant last worked as a full-time campus monitor at Lincoln High School. Claimant was separated from employment on October 23, 2023, when he resigned in lieu of termination.

Claimant last worked on October 10, 2023. On that day, claimant got into a verbal altercation with a student who had been acting out on school grounds. The student had been aggressively wrestling with another student when claimant told them to stop. The student called claimant a pedophile. Claimant told the student he was not and could not be a pedophile and stated he had children the student's age. Claimant took the student to the student services office where the two exchanged more words. Claimant spoke to the student's mother and resolved the issue with her. Later, claimant also apologized to the student for the interaction. The student apologized to claimant, as well.

The employer initiated an investigation in which it was alleged that claimant threatened to involve his sons to address the student's behavior. Claimant did not make this statement. At the conclusion of the investigation, the employer determined claimant had violated a number of its policies, including failing to maintain a satisfactory and harmonious work environment, acting in a manner that endangered the safety of another person, and making threats. The employer presented claimant with the choice of being terminated or resigning to avoid the public nature of a discharge. Claimant submitted his resignation on October 23, 2023. Had claimant not resigned, continued work would not have been offered to him. Claimant had never received disciplinary warnings for conduct similar to that for which he was discharged.

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

For the reasons that follow, the administrative law judge concludes claimant did not quit but was discharged from employment for no disqualifying reason.

Iowa Code section 96.5(1) provides:

An individual shall be disqualified for benefits:

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.

Iowa Admin. Code r. 871—24.26(21) provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

- (21) The claimant was compelled to resign when given the choice of resigning or being discharged. This shall not be considered a voluntary leaving.

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:

- (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 results 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 license, 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 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.

The claimant was given the choice between resigning or being terminated. Had he not chosen to resign, continuing work would not have been offered to him. Accordingly, the separation is not a voluntary quit; it is a discharge.

The employer has not carried its burden of establishing that claimant engaged in disqualifying misconduct. Claimant corrected a student in the course of his work. When the student called claimant a pedophile, claimant explained that he had sons the student's age. It seems likely this comment was misinterpreted by someone who overheard it, because it was alleged that claimant made this comment insinuating that he would have his sons come to the school and address the issue with the student. Claimant credibly testified that is not what he meant by the statement. After the incident, claimant acknowledged that follow-up was necessary, and he spoke with both the student and the student's parent. Claimant did not know that the interaction with the student might jeopardize his employment. The employer has not demonstrated that the conduct rose to the level of misconduct without prior warning.

Inasmuch as employer had not previously warned claimant about the issue leading to the separation, it 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. 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 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.

Claimant had received no prior warnings for conduct similar to that for which he was discharged. The employer has not demonstrated that claimant engaged in conduct despite prior warnings against such conduct. The separation from employment is a discharge for no disqualifying reason. Benefits are allowed, provided claimant is otherwise eligible.

**DECISION:**

The November 15, 2023, (reference 01) unemployment insurance decision is REVERSED. Claimant did not quit but was discharged from employment on October 23, 2023, for no disqualifying reason. Benefits are allowed, provided claimant is otherwise eligible.



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Alexis D. Rowe  
Administrative Law Judge

March 20, 2024  
Decision Dated and Mailed

ar/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:

**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.