

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

LAUREN REHA
Claimant

APPEAL NO. 23A-UI-07566-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

SAFELITE SOLUTIONS LLC
Employer

**OC: 07/02/23
Claimant: Respondent (2)**

Iowa Code Section 96.5(2)(a) &(d) – Discharge for Misconduct
Iowa Code Section 96.3(7) - Overpayment

STATEMENT OF THE CASE:

On August 3, 2023, the employer filed a timely appeal from the July 24, 2023 (reference 01) decision that allowed benefits to the claimant, provided the claimant met all other eligibility requirements, and that held the employer's account could be charged for benefits, based on the deputy's conclusion that the claimant was discharged on July 5, 2023 for no disqualifying reason. After due notice was issued, a hearing was held on August 21, 2023. Lauren Reha (claimant) participated. Joel Kincaid of Corporate Cost Control represented the employer and presented testimony through Samantha Betka, Natasha Osorio and Ashley Toney. The administrative law judge took official notice of the following agency administrative records: DBRO and KFFV. The administrative law judge took official notice of the fact-finding materials and the employer protest for the limited purpose of determining whether the employer participated in the fact-finding interview and, if not, whether the claimant engaged in fraud or intentional misrepresentation in connection with the fact-finding interview.

ISSUES:

Whether the claimant was discharged for misconduct in connection with the employment.
Whether the claimant was overpaid benefits.
Whether the claimant must repay overpaid benefits.
Whether the employer's account may be charged.

FINDINGS OF FACT:

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

Lauren Reha began her employment with Safelite Solutions, L.L.C. from September 2021. At the start of the employment, the employer provided the claimant with online access to the employee handbook. The claimant started the employment as a full-time Customer Service Representative. Shortly after the claimant began the employment, the employer promoted the claimant to Training Coordinator. The claimant continued in the training coordinator position until July 5, 2023, when the employer discharged the claimant from the employment.

On June 30, 2023, the employer learned that the claimant had been recording conversations between the claimant and the claimant's superiors. The claimant worked remotely, used her personal computer for work, and generally communicated with her supervisor and other superiors via Zoom video conferencing. In April 2023, the claimant began recording Zoom conference meetings with the employer. The claimant did not tell the employer she was recording business meetings.

The employer allows employees to record training presentations with appropriate notice to the employer. But the employer uniformly enforces a prohibition against recording other communication without notice and employer approval.

On June 30, 2023, the employer met with the claimant. During that meeting, the claimant confirmed that she had been recording video conference meetings. During the meeting, the employer told the claimant that recording such communications violated the employer's policy. The claimant indicated she was unaware of the policy. The claimant asserted to the employer that Iowa law allowed her to record conversations without advising the employer she was doing so. The employer directed the claimant to review the applicable policy and told the claimant there would be a follow up meeting after the claimant reviewed the policy. The claimant recorded the June 30 meeting. After the meeting, the claimant reviewed the wrong policy. The claimant reviewed a policy that addressed recording interactions with clients.

The employer again met with the claimant on July 5, 2023. The employer showed the claimant the correct policy and where to find it in the online policy materials. The policy in question prohibited taking photos or recording via a cell phone. The claimant draws a distinction between a cell phone and the personal computer she used for work purposes. The employer asked the claimant whether she intended to continue recording communications. The claimant was recording the July 5 meeting, despite the employer's statement on June 30 that recording communications violated company policy. The claimant asserted she recorded the meetings for her "protection." The claimant asserts she began to record meetings out of concern that there had been miscommunications between her and her supervisor that might have limited her opportunities for further advancement. The employer told the claimant she could not continue in the employment unless she ceased recording communications. When the claimant said she intended to continue to record communications, the employer discharged the claimant from the employment.

The claimant established an original claim for benefits that was effective July 2, 2023. The claimant received \$1,481.00 in benefits for four weeks between June 2, 2023 and July 29, 2023. The employer is the sole base period employer.

On July 21, 2023, an Iowa Workforce Development Benefits Bureau deputy held a fact-finding interview that addressed the claimant's separation from the employment. The employer did not receive its copy of the notice of the fact-finding interview until July 25, 2023 and for that reason did not participate in the fact-finding interview. The claimant participated in the fact-finding interview and provided a verbal statement to the IWD deputy. At the fact-finding interview the claimant brought up the policy that prohibited recording interactions with clients, but intentionally omitted reference to the policy the employer directed her to on July 5, 2023 that prohibited employees from take photos or recording with a cell phone. During the fact-finding interview, the claimant answered "no" when asked whether she received verbal warnings regarding the sort of conduct that triggered in the discharge. The claimant was aware of the verbal warning the employer issued on June 30 and purposely omitted reference to that in her statement to the IWD deputy.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(2)(a) and (d) provides as follows:

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 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. 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.

...

Iowa Admin. Code r. 871-24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. For the purposes of this rule, "misconduct" is defined as 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 a 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. 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 this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See *Lee v. Employment Appeal Board*,

616 N.W.2d 661 (Iowa 2000). 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).

While past acts and warnings can be used to determine the magnitude of the current act of misconduct, a discharge for misconduct cannot be based on such past act(s). The termination of employment must be based on a current act. See Iowa Admin. Code r.871 -24.32(8). 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).

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. See 871 IAC 24.32(4).

Continued failure to follow reasonable instructions constitutes misconduct. See *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990). An employee's failure to perform a specific task may not constitute misconduct if such failure is in good faith or for good cause. See *Woods v. Iowa Department of Job Service*, 327 N.W.2d 768, 771 (Iowa 1982). The administrative law judge must analyze situations involving alleged insubordination by evaluating the reasonableness of the employer's request in light of the circumstances, along with the worker's reason for non-compliance. See *Endicott v. Iowa Department of Job Service*, 367 N.W.2d 300 (Iowa Ct. App. 1985). In *Gilliam v. Atlantic Bottling Company*, the Iowa Court of Appeals upheld a discharge for misconduct and disqualification for benefits where the claimant had been repeatedly instructed over the course of more than a month to perform a specific task and was part of his assigned duties. The employer reminded the claimant on several occasions to perform the task. The employee refused to perform the task on two separate occasions. On both occasions, the employer discussed with the employee a basis for his refusal. The employer waited until after the employee's second refusal, when the employee still neglected to perform the assigned task, and then discharged employee. See *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990).

In considering an understanding or belief formed, or a conclusion drawn, by an employer or claimant, the administrative law judge considers what a reasonable person would have concluded under the circumstances. See *Aalbers v. Iowa Department of Job Service*, 431 N.W.2d 330 (Iowa 1988) and *O'Brien v. Employment Appeal Bd.*, 494 N.W.2d 660 (1993).

The evidence in the record establishes a discharge for misconduct in connection with the employment. The employer's written policy prohibited recording work-related communications. Though the policy refers to use of a cell phone, a reasonable person would have understood the policy prohibited recording via any comparable electronic device, such as a computer used for work. The employer specifically told the claimant on June 30, 2023 that recording communications was a violation of company policy. Despite that warning, the claimant recorded the June 30 interaction and later recorded the July 5 interaction. The employer has a right to set and enforce policy regarding the work-related communications, including whether and under what circumstances staff may record such communications. As of June 30, the claimant was aware that the employer deemed her conduct a violation of company policy. The claimant unreasonably refused to comply with the reasonable and uniformly enforced policy by recording on June 30 and July 5 and by telling the employer she intended to continue to record communications. The claimant's conduct rose to the level of insubordination, as well as willful and wanton disregard of the employer's interests, and constituted misconduct in connection with

the employment. The claimant is disqualified for benefits until she has worked in and been paid wages for insured work equal to 10 times her weekly benefit amount. The claimant must meet all other eligibility requirements.

Iowa Code section 96.3(7)a-b, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) (a) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. The employer shall not be relieved of charges if benefits are paid because the employer or an agent of the employer failed to respond timely or adequately to the department's request for information relating to the payment of benefits. This prohibition against relief of charges shall apply to both contributory and reimbursable employers. If the department determines that an employer's failure to respond timely or adequately was due to insufficient notification from the department, the employer's account shall not be charged for the overpayment.

(b) However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment.

The claimant received \$1,481.00 in benefits for four weeks between July 2, 2023 and July 29, 2023, but this decision disqualifies the claimant for those benefits. The benefits are an overpayment of benefits. The employer did not participate in the fact-finding interview because the employer did not have notice of the fact-finding interview. The weight of the evidence establishes that the claimant knowingly and intentionally misrepresented material facts when making her statement to the IWD deputy. The claimant intentionally omitted reference to the policy the employer directed her to on July 5, 2023 that prohibited employees from taking photos or recording with a cell phone. During the fact-finding interview, the claimant answered "no" when asked whether she received verbal warnings regarding the sort of conduct that triggered in the discharge. The claimant was aware of the verbal warning the employer issued on June 30 and purposely omitted reference to that in her statement to the IWD deputy. Based on these knowing and intentional misrepresentations of material facts, the claimant must repay the overpaid benefits. The employer's account will be relieved of charge, including charge for overpaid benefits.

DECISION:

The July 24, 2023 (reference 01) decision is REVERSED. The claimant was discharged on July 5, 2023 for misconduct in connection with the employment. The claimant is disqualified for unemployment benefits until she has worked in and been paid wages for insured work equal to 10 times her weekly benefit amount. The claimant must meet all other eligibility requirements. The claimant is overpaid \$1,481.00 in benefits for four weeks between July 2, 2023 and July 29, 2023. The claimant must repay the overpaid benefits. The employer's account is relieved of charge, including charge for overpaid benefits.



James E. Timberland
Administrative Law Judge

August 29, 2023
Decision Dated and Mailed

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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
4th 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>.

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 está en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

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.