

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

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**KIM L JACKSON**  
Claimant

**DES MOINES AREA COMM COLLEGE**  
Employer

**APPEAL 24A-UI-07440-LJ-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 07/21/24  
Claimant: Appellant (2)**

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Iowa Code § 96.5(2)a – Discharge from Employment

**STATEMENT OF THE CASE:**

On August 19, 2024, claimant Kim L. Jackson filed an appeal from the August 9, 2024 (reference 01) unemployment insurance decision that denied her benefits, determining employer Des Moines Area Community College discharged her for conduct not in the best interest of her employer. The Unemployment Insurance Appeals Bureau initially mailed notice of the hearing on August 21 and scheduled the hearing for September 9, 2024. Both parties appeared on September 9, but the hearing could not proceed. The employer reasonably believed the documents it provided for the fact-finding interview were available to Ms. Jackson and her attorney, Nancy Temple. Ms. Jackson had those documents, but Ms. Temple did not have them. The hearing was rescheduled. Due to multiple scheduling conflicts, the hearing was further delayed.

Administrative Law Judge Elizabeth A. Johnson held a telephonic hearing at 9:00 a.m. on Friday, November 1, 2024. Claimant Kim L. Jackson personally participated. Witnesses Dr. Albert Farr and Mary Madison appeared but did not testify. Attorney William Bruce represented the claimant. Employer Des Moines Area Community College participated through Amanda Easton, Executive Director of Human Resources; Bobby Nalean, Director of Student Success Initiatives. Easton acted as the employer's representative. Erin Lee Schneider appeared but did not testify.

Claimant's Exhibits A, B, C, and D were admitted. Exhibit A had been altered by Mr. Bruce through electronic highlighting that was noted on the Google document. Employer's Exhibits 1, 2, and 4 were admitted without objection. Employer's Exhibits 3, 5, 6, 7, 8, 9, and 10 were admitted over hearsay objection.

**ISSUE:**

Whether claimant Kim Jackson 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 Kim Jackson began employment with Des Moines Area Community College (DMACC) on September 1, 1998, Most recently, she worked full-time for DMACC as the coordinator of the

Upward Bound program. Ms. Jackson's employment ended on July 2, 2024, when the employer discharged her.

On June 21, 2024, Ms. Jackson raised her voice during a discussion with the other Upward Bound employees. Mindy Royster, Peyton, and Janna had been dealing with an issue related to two students being picked up by their relative. Ms. Jackson had a family connection to these students, and the Upward Bound employees all felt that Ms. Jackson had been favoring these two students and treating them differently than the other students in the program. After the students' relative called Ms. Jackson to report that something hostile had been said to the two students about them wasting money by not attending the dinner meal, Ms. Jackson went to the other staff to see what happened. When she asked what was going on, Janna said the two students were "the rudest and most entitled" she had ever met. This comment offended Ms. Jackson, and she loudly responded: "If he spoke to you like that, he needs to be corrected. He did not come from a family where that is okay." Ms. Jackson did not yell at the other employees, use profanity, threaten anyone, or disagree with the premise of the conversation.

Two days later, the staff came back to campus in preparation to begin another week of Upward Bound. At their team meeting, Ms. Jackson apologized for raising her voice during the June 21 conversation. During her apology, Ms. Jackson explained that she tries to control her anger. She referenced an incident from her youth when she pulled a knife on someone when she was angry. Ms. Jackson was trying to explain that she made a mistake by acting out of anger and does not behave that way now, but that message did not come across to her coworkers.

Mr. Nalean began investigating Ms. Jackson after the June 21 incident. Ms. Royster had reported Ms. Jackson's conduct to Human Resources, which led Mr. Nalean to speak with and collect statements from her as well as the student-employees in the Upward Bound program. After concluding his investigation, Mr. Nalean met with Ms. Jackson on July 2. When he asked her what her plan was for improving the situation, she described how she would repair her personal relationship with Ms. Royster. She noted that the Upward Bound student-employees would be gone at the end of the summer, so those relationships would no longer matter. Those responses, in conjunction with Ms. Jackson's conduct on June 21 and June 23, led Mr. Nalean and the HR team to discharge her. She had never been warned for any prior similar conduct.

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

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

(6) Conduct that substantially and unjustifiably endangers the personal safety of coworkers or the general public...

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 Iowa Court of Appeals found substantial evidence of misconduct in testimony that the claimant worked slower than he was capable of working and would temporarily and briefly improve following oral reprimands. *Sellers v. Emp't Appeal Bd.*, 531 N.W.2d 645 (Iowa Ct. App. 1995). Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990). Failure to sign a written reprimand acknowledging receipt constitutes job misconduct as a matter of law. *Green v Iowa Dep't of Job Serv.*, 299 N.W.2d 651 (Iowa 1980). When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988).

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.

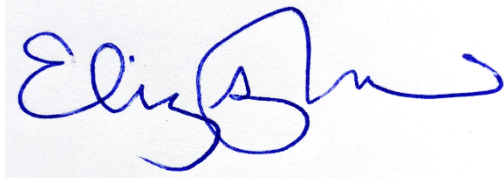
The administrative law judge has an obligation to determine the credibility of witnesses, weigh the evidence, and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). If a party has the power to produce more explicit and direct evidence than it chooses to present, the administrative law judge may infer that evidence not presented would reveal deficiencies in the party's case. *Crosser v. Iowa Dep't of Pub. Safety*, 240 N.W.2d 682 (Iowa 1976). 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 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. I find Ms. Jackson's testimony the most reliable evidence in this case. Ms. Jackson is the only firsthand witness of the events of June 21 and June 23 that participated in the hearing. Her testimony is inherently more believable than a written statement from a witness that cannot be cross-examined. Additionally, Ms. Jackson's account of events is consistent with the brief audio clip of her speaking on June 23. The June 23 audio does not show Ms. Jackson yelling or upset. I do not believe Ms. Jackson referencing "pulling a knife" on someone in her youth was a threat, but an explanation of why she no longer acts on her anger today. I do not think anyone in that meeting reasonably believed it was a threat, given that they all remained in the meeting and did not flee or call 911 or Campus Security.

An employer can discharge an employee for any reason or no reason at all, provided that reason is not illegal. However, the employer may be liable to fund the employee's unemployment insurance benefits if the employer does not establish that it discharged the employee for disqualifying, job-related misconduct. Here, DMACC has not shown that Ms. Jackson committed a final willful act in deliberate disregard of its interests. One colleague raising her voice at another – without more – is not disqualifying misconduct. DMACC has not met its burden of proving Ms. Jackson was discharged for disqualifying, job-related misconduct. Benefits are allowed, provided Ms. Jackson is otherwise eligible

**DECISION:**

The August 9, 2024 (reference 01) unemployment insurance decision is reversed. The employer discharged Ms. Jackson from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.



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Elizabeth A. Johnson  
Administrative Law Judge

November 12, 2024  
Decision Dated and Mailed

lj/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.