

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

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**LORI M HAZEN**  
Claimant

**LONE TREE HEALTH CARE CENTER INC**  
Employer

**APPEAL 24A-UI-00989-PT-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 11/19/23**  
**Claimant: Respondent (1)**

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Iowa Code § 96.5(2)a – Discharge  
Iowa Code § 96.3(7) – Overpayment of Benefits  
Iowa Admin. Code r. 871-24.10 – Employer Participation in Fact-finding Interview

**STATEMENT OF THE CASE:**

The employer, Lone Tree Health Care Center Inc., filed an appeal from a decision of a representative dated January 17, 2024, (reference 01) that held the claimant eligible for unemployment insurance benefits after a separation from employment. After due notice, a telephone hearing was held on February 14, 2024. The claimant, Lori Hazen, participated personally. The employer participated through Administrator Lindsey Stieger, Business Manager Samantha Criswell, Maintenance Director Ronald Davis, and Housekeeping Manager Beth Hora. Employer's Exhibits 1 through 7 were admitted into evidence. The administrative law judge took official notice of the administrative record.

**ISSUES:**

Whether the claimant was discharged for disqualifying, job-related misconduct.  
Whether the claimant has been overpaid any unemployment insurance benefits, and if so, whether the repayment of those benefits to the agency can be waived?  
Whether any charges to the employer's account can be waived?

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: The claimant began working as a full-time dietary cook for Lone Tree Health Care Center Inc. on February 21, 2017. The claimant was separated from employment on November 21, 2023, when she was discharged.

As a dietary cook, claimant was responsible for preparing the kitchen and cooking meals for residents. The employer has a written employee manual that contains a drug free workplace policy. The drug free workplace policy prohibits the unlawful possession, use, manufacture or distribution of controlled substances in the workplace. The claimant received a copy of the employee manual and was familiar with the employer's work rules and policies.

On or around November 20, 2023, an employee reported to the administrator that while she was working near the claimant, she witnessed another employee walk up to the claimant and place a

couple unidentified pills in the claimant's hand. The administrator began an investigation that same day.

The administrator investigated the allegation by calling claimant's coworkers into her office one at a time and asking each employee whether the claimant had ever asked them for prescription medication or if they had witnessed the claimant ask others for prescription medication. At the hearing, the administrator did not know how many total employees were questioned, but in addition to the initial report, four other employees provided written statements. (Employer Exhibits 1 - 5).

One employee, who testified at the hearing, generally said that he had "heard of pills being sold in the facility," but provided no specifics as to when he heard the information, who was involved, or where he heard it from. (Exhibit 1). Another employee, who also testified at the hearing, stated that the claimant had asked her for pain medication approximately seven years ago, in the spring of 2017. (Exhibit 2). A third employee recalled overhearing parts of a conversation between the claimant and another employee that sounded like they may have been discussing prescription medication. However, the employee did not testify at the hearing, her written statement acknowledges that she was unable to hear a significant portion of the exchange, and her written account gives no indication as to when the alleged conversation occurred. (Exhibit 4). The final employee, who did not testify at the hearing, wrote that at some point, the claimant had told her she takes pain medication and asked the employee if she knew anyone who had some.

On November 21, 2023, the employer called claimant into a meeting and confronted claimant with the results of the investigation. When the employer questioned the claimant about the allegations, the claimant adamantly denied the allegations. The claimant also offered to take a drug screen, but the employer declined. At the end of the meeting, the employer informed claimant that her employment was being terminated effective immediately due to suspicion that she was purchasing prescription drugs from coworkers in violation of the employer's drug free workplace policy. In the termination notice, the employer wrote, "At this time, due to the incident being speculation only, the Lone Tree Healthcare Center is choosing not to press criminal charges..."

The claimant's administrative records indicate the claimant filed her original claim for unemployment insurance benefits with an effective date of November 19, 2023. Since filing her initial claim, the claimant has filed weekly claims for nine weeks between November 19 2023 and January 20, 2024, and has received total benefits of \$4,734.00. The employer did not participate in the fact-finding interview because it did not receive notice of the interview until after the interview was scheduled to occur.

#### **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.

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 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 law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Bd.*, 616 N.W.2d 661 (Iowa 2000). A failure in job performance is not misconduct unless it is intentional. *Huntoon*, supra; *Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661 (Iowa 2000).

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 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 the claimant's testimony that she did not purchase or ask other employees about purchasing prescription medication to be more credible than the employer's testimony, as the claimant was the only witness who testified who had direct, first-hand knowledge of the events at issue.

The employer terminated the claimant's employment because the employer suspected the claimant had purchased, or attempted to purchase, prescription medication while at work. While the employer performed an investigation, obtained witness statements, and had two employees testify at the hearing, as discussed above, the written witness statements are hearsay, indistinct, and lack important details, such as when the alleged events occurred, what specifically was said, and what type of pills were observed. Moreover, the first witness who testified at the hearing had no direct, first-hand knowledge of the conduct at issue and the second witness recounted an alleged incident that occurred approximately seven years ago. What is more, in the termination notice itself, the employer wrote, "At this time, due to the incident being speculation only the [employer] is choosing not to press criminal charges..."

Finally, the employer suspected that the claimant was purchasing prescription medication at work, but chose not to request—or possibly declined—to have the claimant submit to a drug screen pursuant to Iowa Code § 730.5. If an employer chooses to conduct alcohol or drug testing, it must substantially comply with all the strict requirements of the statute. Rather than meet that burden, the employer based its claim that the claimant purchased and used controlled substances on vague witness statements, with the most relevant witnesses choosing not to testify at the hearing.

The employer has the burden of proof. The employer has failed to prove that the claimant purchased or used controlled substances while at work. Therefore, there is no current act of

job-related misconduct that would disqualify the claimant from receiving unemployment insurance benefits. As such, benefits are allowed, provided the claimant is otherwise eligible.

Because the separation is not disqualifying, the issues of overpayment, repayment, and participation are moot.

**DECISION:**

The January 17, 2024, (reference 01) unemployment insurance decision is affirmed. The claimant was discharged from employment on November 21, 2023, for no disqualifying reason. The claimant is eligible to receive unemployment insurance benefits, provided the claimant meets all other eligibility requirements. The issues of overpayment, repayment, and participation are moot.



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Patrick B. Thomas  
Administrative Law Judge

February 20, 2024  
Decision Dated and Mailed

PBT/jkb

**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.