

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

**CATHERINE L KNABEL**  
Claimant

**ROC TAPROOM INC**  
Employer

**APPEAL NO. 25A-UI-01306-JT-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 01/12/25**  
**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 February 11, 2025, the employer filed a timely appeal from the February 5, 2025 (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 January 17, 2025 for no disqualifying reason. After due notice was issued, a hearing was held on March 5, 2025. Catherine Knabel (claimant) participated. Breanna Herring represented the employer and presented additional testimony through Beth Hammer and Tim Perkins. Exhibits 1 through 16 and A, B, C and F were received into evidence. Exhibits D, E and G were not admitted into evidence. 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 for the limited purpose of documenting the employer's participation in 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:

Catherine Knabel (claimant) was employed by ROC Taproom, Inc., doing business as Old Chicago, as a full-time breakfast server, banquet server, and prep cook at the employer's Dubuque restaurant from 2018 until January 17, 2025, when the employer discharged her from the employment. Peyton Tegeler, Kitchen Manager, and Beth Hammer, General Manager, were Ms. Knabel's supervisors. Ms. Hammer reports to Tim Perkins, Vice President of Finance and Strategic Operations. All three management members assisted with operating the restaurant.

The final incident that triggered the discharge occurred on January 11, 2025. On that date, Ms. Knabel started work at 6:00 a.m. and left at 10:15 a.m. at the end of her breakfast server shift. Ms. Knabel performed her duties alongside three coworkers that morning. The four employees performed some of their duties in the breakfast prep area. During the morning shift, Ms. Hammer and Ms. Tegeler each interacted briefly with Ms. Knabel and each wondered whether Ms. Knabel might have been consuming alcohol that morning. Ms. Knabel had been absent on January 9 due to illness and had left work early on January 10 due to lingering illness. Neither Ms. Tegeler nor Ms. Hammer confronted Ms. Knabel regarding their suspicion that she may have been consuming alcohol at work and/or before she reported for work on January 11.

Shortly after Ms. Knabel left for the day on January 11, 2025, Ms. Hammer noted a to-go cup in the breakfast prep area. Ms. Hammer left the cup as it was. Soon thereafter, Mr. Perkins was working in the food prep area and accidentally bumped the cup, which spilled the liquid contents. Mr. Perkins and Sadie Pettigrew, Banquet Night Lead, each noted the smell of liquor. Ms. Pettigrew took the cup to Ms. Hammer, who also noted the smell of liquor, likely vodka. Though Ms. Hammer had interacted briefly with Ms. Knabel that morning, she had interacted at greater length with the other breakfast employees and concluded there was no reason to suspect anyone but Ms. Knabel of possessing or imbibing alcohol at work that morning. The employer waited until the time of discharge on January 17, 2025 to mention the to-go cup incident to Ms. Knabel.

The employer has a written Alcohol and Controlled Substance Policy that prohibits employees from using or possessing alcohol on the employer's premises and a Zero Tolerance Offenses policy that indicates violation of the employer's alcohol and controlled substance policy subjects the offending employee to immediate discharge from the employment. Ms. Knabel was at all relevant times aware of the employer's policies.

The employer considered earlier conduct when making the decision to discharge Ms. Knabel from the employment. In September 2024, the employer set up a surveillance camera in a supply storage room after noting that alcohol was missing from the locked liquor cage in that room. During the period in question, Ms. Knabel had keys to the restaurant, including keys to the locked liquor cage and to the locked beer and wine cooler. On the morning of September 27, 2024, the camera documented Ms. Knabel briefly accessing the locked liquor cage five times between 6:34 a.m. and 9:46 a.m. The length of access was respectively 77 seconds, 32 seconds, 24 seconds, 26 seconds and 26 seconds. During these times, Ms. Knabel had no legitimate work-related reason to access the locked liquor cage. During each time of access, Ms. Knabel leaned into the liquor cage. A reasonable person would conclude that Ms. Knabel was stealing and imbibing the employer's liquor during these brief access periods. At 10:00 a.m., Ms. Knabel accessed the locked beer and wine cooler for 35 seconds without a legitimate work-related reason. A reasonable person would conclude that Ms. Knabel was at that time stealing and imbibing the employer's beer and/or wine.

On September 30, 2024, Mr. Perkins and Ms. Hammer spoke with Ms. Knabel regarding the September 27 incidents. Ms. Knabel admitted to having consumed alcohol at work on September 27. Ms. Knabel stated she had repeatedly accessed the locked liquor cage because she was tempted to consume the employer's alcohol. Ms. Knabel implausibly asserted that the alcohol she consumed that day was alcohol she brought from home. The employer elected to depart from its zero tolerance policy and instead expressed a concern for Ms. Knabel's well-being. Ms. Knabel thereafter voluntarily surrendered her keys to the restaurant. The employer continued thereafter to be concerned that Ms. Knabel was working after consuming

alcohol and/or while under the influence of alcohol. These concerns led to a December 5, 2024 written reprimand.

Ms. Knabel established an original claim for unemployment insurance benefits that Iowa Workforce Development deemed effective January 12, 2025. Ms. Knabel received \$3,374.00 in benefits for seven weeks between January 19, 2025 and March 8, 2025. This employer is the sole base period employer.

On February 4, 2025, Iowa Workforce Development held a fact-finding interview that addressed Ms. Knabel's discharge from the employment. Breanna Herring, Human Resources Generalist, represented the employer at the fact-finding interview.

### **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.

...

(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.

...

(13) Theft of an employer or coworker's funds or property.

...

See also Iowa Admin. Code r. 871-24.32(1)(a) (repeating the text of the statute).

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 rule 871-24.24(7). 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).

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 Ct. 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 evidence in the record establishes a January 17, 2025 discharge for misconduct in connection with the employment. The weight of the evidence in the record establishes that Ms. Knabel knowingly and intentionally possessed and consumed alcohol at work on January 11, 2025. The employer took reasonable steps to eliminate other staff from consideration when making the determination that Ms. Knabel was responsible for the to-go cup containing alcohol. The employer's mistake regarding the date of the final incident, January 10 versus January 11, highlights the prudence of documenting matters in a timely manner, but does not significantly undermine the employer's case. On the other hand, Ms. Knabel provided testimony that significantly undermined her credibility. Ms. Knabel provided a highly implausible and non-credible explanation of why she repeatedly accessed the employer's locked liquor cage five times within a brief period on September 27, 2024, with four of those incidents lasting about half a minute. The weight of the evidence indicates that Ms. Knabel repeatedly stole and consumed the employer's alcohol on September 27 and that she was intentionally dishonest with the employer on September 27. The weight of the evidence establishes that the employer deviated from its zero tolerance policy out of compassion after recognizing that Ms. Knabel had a serious ongoing issue with alcohol abuse. The weight of the evidence establishes multiple instances wherein Ms. Knabel consumed alcohol at work in violation of the employer's policy. Ms. Knabel is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount. Ms. Knabel must meet all other eligibility requirements.

Iowa Administrative Code rule 871-24.10(1) and (4), regarding employer participation in fact-finding interviews, provides as follows:

Employer and employer representative participation in fact-finding interviews.

24.10(1) "Participate," as the term is used for employers in the context of the initial determination to award benefits pursuant to Iowa Code section 96.6, subsection 2, means submitting detailed factual information of the quantity and quality that if un rebutted would be sufficient to result in a decision favorable to the employer. The most effective means to participate is to provide live testimony at the interview from a witness with firsthand knowledge of the events leading to the separation. If no live testimony is provided, the employer must provide the name and telephone number of an employee with firsthand information who may be contacted, if necessary, for rebuttal. A party may also participate by providing detailed written statements or documents that provide detailed factual information of the events leading to separation. At a minimum, the information provided by the employer or the employer's representative must identify the dates and particular circumstances of the incident or incidents, including, in the case of discharge, the act or omissions of the claimant or, in the event of a voluntary separation, the stated reason for the quit. The specific rule or policy must be submitted if the claimant was discharged for violating such rule or policy.

In the case of discharge for attendance violations, the information must include the circumstances of all incidents the employer or the employer's representative contends meet the definition of unexcused absences as set forth in 871—subrule 24.32(7). On the other hand, written or oral statements or general conclusions without supporting detailed factual information and information submitted after the fact-finding decision has been issued are not considered participation within the meaning of the statute.

...

(4) "Fraud or willful misrepresentation by the individual," as the term is used for claimants in the context of the initial determination to award benefits pursuant to Iowa Code section 96.6, subsection 2, means providing knowingly false statements or knowingly false denials of material facts for the purpose of obtaining unemployment insurance benefits. Statements or denials may be either oral or written by the claimant. Inadvertent misstatements or mistakes made in good faith are not considered fraud or willful misrepresentation.

Iowa Code section 96.3(7) provides in relevant part as follows:

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.

Ms. Knabel received \$3,374.00 in benefits for seven weeks between January 19, 2025 and March 8, 2025, but this decision disqualifies Ms. Knabel for those benefits. The benefits Ms. Knabel received are an overpayment of benefits. Because the employer participated in the fact-finding interview, Ms. Knabel must repay the overpaid benefits. The employer's account shall be relieved of charge for benefits, including benefits already paid to the claimant.

**DECISION:**

The February 5, 2025 (reference 01) decision is REVERSED. The claimant was discharged on January 17, 2025 for misconduct in connection with the employer. The claimant is disqualified for unemployment benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account shall be relieved of charge for benefits, including charge for benefits already paid to the claimant. The claimant is overpaid \$3,374.00 in benefits for seven weeks between January 19, 2025 and March 8, 2025. The claimant must repay the overpaid benefits.



---

James E. Timberland  
Administrative Law Judge

March 13, 2025  
Decision Dated and Mailed

rvs

**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  
6200 Park Ave 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>.

**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  
6200 Park Ave Suite 100  
Des Moines, Iowa 50321  
Fax: (515)281-7191  
Online: 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 adquiera 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.