

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

ELAINE M KLOSTERMAN
Claimant

NIEMANN FOODS INC
Employer

APPEAL 24A-UI-07985-DZ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 08/04/24
Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

Elaine M. Klosterman, the claimant/appellant,¹ appealed the Iowa Workforce Development (IWD) September 3, 2024 (reference 01) unemployment insurance (UI) decision. IWD denied Ms. Klosterman REGULAR (state) UI benefits because IWD concluded the employer discharged her from employment on August 6, 2024 for violating a known company rule. On September 10, 2024, the Iowa Department of Inspections, Appeals, and Licensing (DIAL), UI Appeals Bureau mailed a notice of hearing to Ms. Klosterman and the employer for a telephone hearing scheduled for September 24, 2024.

The administrative law judge held a telephone hearing on September 24, 2024. Ms. Klosterman participated in the hearing personally. The employer participated in the hearing through Jeff Dowding, store director. The administrative law judge admitted Department's Exhibit 1, Claimant's Exhibit A, and Employer's Exhibit 1 as evidence.

The administrative law judge concludes Ms. Klosterman is not eligible for REGULAR (state) UI benefits based on how her job ended with this employer.

ISSUE:

Did the employer discharge Ms. Klosterman from employment for disqualifying, job-related misconduct?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: Ms. Klosterman began working for the employer on September 13, 2023. She worked as a full-time shift supervisor. Her employment ended on August 6, 2024.

On June 3, the regional director of operations gave Ms. Klosterman a verbal warning because the employer received complaints from multiple employees about how Ms. Klosterman spoke to

¹ Claimant is the person who applied for UI benefits. Appellant is the person or employer who appealed.

them. Ms. Klosterman explained that she is firm and direct in her tone at work. The director instructed Ms. Klosterman to speak with employees respectfully.

Around the same time, a minor (Employee A) started with for the employer. One day, Employee A was using their cell phone at work. Ms. Klosterman squeezed Employee A's wrist said something to the effect of "When you're done, I have a project for you."

Separately, at closing time on July 24, a different employee (Employee B) yelled and cursed at Ms. Klosterman. Employee B told Ms. Klosterman they were the only person who had the balls to yell at her. Ms. Klosterman reported the incident to Mr. Dowding the next day. Mr. Dowding spoke with Employee B, they admitted to their conduct, and gave a two-week resignation notice. Employee B also told Mr. Dowding that Ms. Klosterman was harassing and verbally abusing employees, and Employee B saw Ms. Klosterman pull another employee's arm. This was the first time Mr. Dowding heard these allegations.

Mr. Dowding interviewed every employee, including Employee A, about the allegations. Employee A reported that Ms. Klosterman physically grabbed them on multiple occasions without consent. Other employees reported that Ms. Klosterman ordered them around, and they saw Ms. Klosterman grab employees while saying things like "Come with me," or "I'm not done with you yet."

The employer has a zero-tolerance policy for harassment, violence, threats of violence and/or intimidation. Ms. Klosterman acknowledged receiving a copy of the policy on, or about, her hire date. Mr. Dowding concluded that Ms. Klosterman violated the employer's policy. On August 6, Mr. Dowding terminated Ms. Klosterman's employment.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the employer discharged Ms. Klosterman from employment on August 6, 2024 for a reason disqualifying, job-related misconduct.

Iowa Code section 96.5(2)(a) and (d) provide, in relevant part:

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 individual shall be disqualified for benefits 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

The employer has the burden of proof in establishing disqualifying job misconduct.² The issue is not whether the employer made a correct decision in separating Ms. Klosterman from employment, but whether she is entitled to unemployment insurance benefits.³ Misconduct must be "substantial" to warrant a denial of job insurance benefits.⁴

The employer may establish reasonable work rules and expect employees to abide by them. The employer has presented credible evidence that Ms. Klosterman grabbed employees. This is misconduct. Ms. Klosterman downplays her actions as simply a manager attempting to direct employees in work tasks and/or a manager attempting to help guide a minor employee. Whatever Ms. Klosterman's intentions were, she violated the employer's policy. The employer has established disqualifying, job-related misconduct on the part of Ms. Klosterman. So, she is not eligible for UI benefits.

DECISION:

The September 3, 2024 (reference 01) UI decision is AFFIRMED. The employer discharged Ms. Klosterman from employment on August 6, 2024 for disqualifying, job-related misconduct. Ms. Klosterman is not eligible for REGULAR (state) UI benefits until she has worked in and been paid wages for insured work equal to ten times her weekly UI benefit amount, as long as no other decision denies her UI benefits.



Daniel Zeno
Administrative Law Judge

September 25, 2024
Decision Dated and Mailed

DZ/jkb

² *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982).

³ *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984).

⁴ *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984).

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 IA 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 IA 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 adquiera 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.