

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

JACQUELINE SHEETS
Claimant

HY-VEE INC
Employer

APPEAL 24A-UI-09167-DZ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 09/22/24
Claimant: Appellant (2)**

Iowa Code § 96.5(2)a – Discharge

STATEMENT OF THE CASE:

Jacqueline Sheets, the claimant/appellant,¹ appealed the Iowa Workforce Development (IWD) October 22, 2024 (reference 01) unemployment insurance (UI) decision. IWD denied Ms. Sheets REGULAR (state) UI benefits because IWD concluded the employer discharged her from employment on September 20, 2024 for theft of company property. On October 28, 2024, the Iowa Department of Inspections, Appeals, and Licensing (DIAL), UI Appeals Bureau mailed a notice of hearing to Ms. Sheets and the employer for a telephone hearing scheduled for November 12, 2024.

The administrative law judge held a telephone hearing on November 12, 2024. Ms. Sheets participated in the hearing personally. The employer participated in the hearing through Jamie Soetmelk, human resources manager, Justin Telles, co-store manager trainee, and Kelly Ray, Experian/Corporate Cost Control hearing representative. 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. Sheets is eligible for REGULAR (state) UI benefits based on how her job ended with this employer.

ISSUE:

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

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: Ms. Sheets began working for the employer in 2009. She worked as a full-time assistant manager at one of the employer's convenient stores. Her employment ended on September 20, 2024.

On September 19, the district director visited the store at which Ms. Sheets worked. The district manager observed an employee (Employee A) come up to Ms. Sheets, hand her an expired

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

food item, tell Ms. Sheets the item was expired, Ms. Sheets scan the food item as a discard item, and Employee A walk away. It was not unusual for an employee to ask Ms. Sheets to scan one expired food item. The employer's usual practice is to throw away food that is scanned as discard and/or put the item on a cart to be thrown away later. Employee A took the food to the break room and ate it.

About two weeks earlier, the district manager had sent an email to managers at the store explaining that employees are not allowed to give away expired food to anyone. Ms. Sheets did not see the email.

The next day, the district manager directed Ms. Soetmelk to discuss the matter with Ms. Sheets. Ms. Soetmelk and Mr. Telles did so. Ms. Sheets admitted to scanning the item Employee A handed to her but denied knowing that Employee A took the item to the break room and ate it. Ms. Soetmelk discussed the matter with the district manager. They concluded that Ms. Sheets stole from the employer by giving Employee A free food. The employer's policy prohibits theft. Ms. Sheets acknowledged receiving a copy of the policy on, or about, her hire date. Ms. Soetmelk told Ms. Sheets her employment was over.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the employer discharged Ms. Sheets from employment on September 20, 2024 for a reason that does not disqualify her from receiving UI benefits.

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. Misconduct by an individual includes but is not limited to all of the following:

...

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

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. Sheets 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

In an at-will employment environment an employer may discharge an employee for any number of reasons or no reason at all, if it is not contrary to public policy. But, if the employer fails to meet its burden of proof to establish job related misconduct as the reason for the separation, the employer incurs potential liability for UI benefits related to that separation. A decision about 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 of the employer’s policy or rule 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.

Theft is misconduct under the explicit statutory definition of misconduct. In addition, the Iowa Supreme Court has found a single attempted theft to be misconduct as a matter of law.⁵ Even the theft of a small value item can be misconduct. The Iowa Court of Appeals has found an employee who took a wasted \$10.00 container of soup from a dumpster was disqualified for misconduct.

In this case, the employer has not established that Ms. Sheets stole from the employer. On September 20, Ms. Sheets did what she usually did – she scanned one expired food item as discarded food. Employee A then ate the food instead of throwing it away or putting it on a cart to throw away. Employee A’s actions do not mean Ms. Sheets stole. Since the employer has not established disqualifying, job-related misconduct on the part of Ms. Sheets, she is eligible for REGULAR (state) UI benefits.

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).

⁵ *Ringland Johnson Inc. v. Employment Appeal Board*, 585 N.W.2d 269 (Iowa 1998).

DECISION:

The October 22, 2024 (reference 01) UI decision is REVERSED. The employer discharged Ms. Sheets from employment on September 20, 2024 for a reason that does not disqualify her from receiving UI benefits. Ms. Sheets is eligible for REGULAR (state) UI benefits, as long as no other decision denies her UI benefits.



Daniel Zeno
Administrative Law Judge

November 18, 2024
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:

**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.