

## Unemployment Claims in Iowa

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### I. Guide for Interpretation of Unemployment Law

[T]he public policy of this state is declared to be as follows: Economic insecurity due to unemployment is a serious menace to the health, morals, and welfare of the people of this state. Involuntary unemployment is therefore a subject of general interest and concern which requires appropriate action by the legislature to prevent its spread and to lighten its burden which now so often falls with crushing force upon the unemployed worker and the worker's family. The achievement of social security requires protection against this greatest hazard of our economic life. This can be provided by encouraging employers to provide more stable employment and by the systematic accumulation of funds during periods of employment to provide benefits for periods of unemployment, thus maintaining purchasing power and limiting the serious social consequences of poor relief assistance. The legislature, therefore, declares that in its considered judgment the public good, and the general welfare of the citizens of this state require the enactment of this measure, under the police powers of the state, for the compulsory setting aside of unemployment reserves to be used for the **benefit of persons unemployed through no fault of their own.**

Iowa Code § 96.2 (emphasis added). Translation = Employees almost always win.

### II. Criteria for Eligibility for Unemployment

- A. The individual is:
1. able to work,
  2. available for work, and
  3. earnestly and actively seeking work.

- B. (Work search is waived if the individual is “temporarily”<sup>1</sup> or “partially” unemployed<sup>2</sup>)

III. Discharge for Misconduct

- A. Misconduct sufficient to discharge an employee is not necessarily misconduct sufficient to disqualify him or her from unemployment. *Lee v. Employment Appeal Bd.*, 616 N.W.2d 661, 665-66 (Iowa 2000).

“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.

Iowa Admin. Code r. 871—24.32(1)(a) (emphasis added)

- B. “The employer has the burden of proof on this issue.” *West v. Employment Appeal Bd.*, 489 N.W.2d 731, 734 (Iowa 1992).

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<sup>1</sup> Temporary unemployment = A period not to exceed four consecutive weeks when the individual is unemployed due to a plant shutdown, vacation, inventory, lack of work or emergency from the individual’s regular job or trade in which the individual worked full-time and will again work full-time, if the individual’s employment, although temporarily suspended, has not been terminated.

<sup>2</sup> An individual is considered partially unemployed and eligible for UI benefits if he or she:

- Works less than a regular full-time week while employed at his or her regular job and earns less than his or her weekly benefit amount\* plus \$15
- Is separated from his or her regular job but maintains part-time employment and earns less than his or her weekly benefit amount\* plus \$15

\*Weekly benefit amount is determined by the individual’s wages and number of dependents. The maximum weekly benefit amount in Iowa is currently \$501.

C. Must be Current; Can't Dredge Up Past Acts

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.

Iowa Admin. Code r. 871—24.32(8).

D. Examples (see Dan Anderson, Selected Issues in Unemployment Insurance Adjudication, <http://www.iowaworkforce.org/ui/appeals/selectissues.htm>):

1. **Excessive, unexcused** absenteeism. Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct **except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer.** Iowa Admin. Code r. 871—24.32(7).
2. **Threats of/Acts of Violence/Abusive Language.** Usually misconduct, if employer can prove it.
  - a. **Misconduct.** See, e.g., *Henecke v. Iowa Div. of Job Service*, 533 N.W.2d 573 (Iowa Ct. App. 1995) (threatened supervisor, “stay out of my f\*ing face or you’ll be sorry”); *Savage v. Employment Appeal Bd.*, 529 N.W.2d 640 (Iowa Ct. App. 1995) (hit and pulled coworker’ hair); *Myers v. Employment Appeal Bd.*, 462 N.W.2d 734 (Iowa Ct. App. 1990) (called coworker a “dumb b\*tch” and threatened, “I will make it so miserable they will fire me”); *Carpenter v. Iowa Dep’t of Job Service*, 401 N.W.2d 242 (Iowa Ct. App. 1986) (told supervisor “[y]ou can kiss my ass or fire me or whatever”); *Zeches v. Iowa Dep’t of Job Services*, 333 N.W.2d 735 (Iowa Ct. App. 1983) (said to vendor (and within hearing of two customers and a company auditor), “[t]he stupid mother-f\*ers in the office just can’t get their head out of their a\*\* , they don’t know what’s going on”); *Deever v. Hawkeye Window Cleaning, Inc.*, 447 N.W.2d 418 (Iowa Ct. App. 1989) (asked foreman whether supervisor wanted “his other f\*ing foot broke”).

**BUT**

- b. **Not Misconduct.** Actions of employee who grabbed arm of coemployee while off company property during lunch hour, spun coemployee around, and told coemployee she would knock her down if she did not stop spreading rumors about her did not constitute “misconduct.” *Diggs v. Employment Appeal Bd.*, 478 N.W.2d 432, 434 (Iowa Ct. App. 1991) (“The misconduct which resulted in Ms. Diggs’ discharge was an incident involving another employee off company

premises and off company time. This incident was not connected with employment and cannot therefore form a basis to disqualify her from receiving unemployment benefits.”).

- c. Employee did not commit misconduct by calling his supervisor a “dirty b\*tch” in an isolated comment not made during an argument, and excessive sharpening of his knife, unsafe operation of a bicycle, and the “dirty b\*tch” comment did not cumulatively amount to misconduct. *Budding v. Iowa Dept. of Job Service*, 337 N.W.2d 219 (Iowa Ct. App. 1983).

3. **Theft/Knowing Violation of Policy.** Misconduct if employer can prove *knowledge* of the policy. (Get Handbook Acknowledgments!)

- a. **Misconduct.** *See, e.g., Tompkins-Kutcher v. Employment Appeal Bd.*, No 11-0149 (Iowa Ct. App. 2011) (Casey’s employee who took discarded, outdated soup from the dumpster (to feed to her dog) committed misconduct because she knew about the company policy prohibiting taking outdated food).

**BUT**

- b. **Not Misconduct.** *See, e.g., Henry v. Iowa Dep’t of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986) (receptionist who failed to properly secure money on one occasion, as she was required to do at the end of her shift, did not commit misconduct when she had never before failed to secure money, she made the mistake on the first day the employer’s new money security policy was in effect, and she asked another employee to properly secure the money but that other employee failed to do so).

IV. **Voluntary Quit** (Without Good Cause Attributable to Employer)

- A. “In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated.” Iowa Admin. Code r. 871—24.25.
- B. The employer has the burden of proof.
- C. The following scenarios ARE considered disqualifying voluntary quits:
  - 1. Lack of transportation to the work site (unless the employer had agreed to furnish transportation).

2. Left due to the commuting distance to the job, but knew of the distance when hired.
3. Left because of lack of child care.
4. Left for compelling personal reasons requiring absence for more than 10 days.
5. Left voluntarily due to family responsibilities or serious family needs.
6. Moved to a different locality.
7. Left employment to accompany the spouse to a new locality.
8. Left to get married.
9. Left to go to school.
10. Left to seek other employment.
11. Left to enter self-employment.
12. No call/no show for 3 days, in violation of company rule.
13. Left without notice during a mutually agreed upon trial period of employment.
14. Left to take a vacation.
15. Left due to inability to work with other employees.
16. Left because of dissatisfaction with the wages but knew the rate of pay when hired.
17. Left because of dissatisfaction with the work environment.
18. Left because of a personality conflict with the supervisor.
19. Left because of a dislike of the shift worked.
20. Left rather than perform the assigned work as instructed.
21. Left after being reprimanded.
22. Left by refusing a transfer to another location when it was known at the time of hire that it was customary for employees to transfer as required by the job.
23. Left because felt that the job performance was not to the satisfaction of the employer; provided, the employer had not requested the claimant to leave and continued work was available.

24. Failed to return to work upon the termination of a labor dispute.
25. Left to enter military service, and did not return within 90 days after release from military service.
26. Incarcerated.
27. Retirement when could have continued working.
28. Left work to keep from earning enough wages during the year to adversely affect claimant's receipt of federal old-age benefits (social security).
29. Left in anticipation of a layoff in the near future; however, work was still available at the time claimant left the employment.
  - a. Where the claimant voluntarily quit in advance of the announced scheduled layoff, the disqualification period will be from the last day worked to the date of the scheduled layoff. Benefits shall not be denied from the effective date of the scheduled layoff.
30. Left because work was irregular due to weather conditions; however, this working condition was not unusual in claimant's type of employment.
31. Left because of illness or injury which was not caused or aggravated by the employment or pregnancy and failed to:
  - a. Obtain the advice of a licensed and practicing physician;
  - b. Obtain certification of release for work from a licensed and practicing physician;
  - c. Return to the employer and offer services upon recovery and certification for work by a licensed and practicing physician; or
  - d. Fully recover so that the claimant could perform all of the duties of the job.
32. Left due to an illness or injury which was allegedly caused or aggravated by the employment, but the employer met its burden of proof in establishing that the illness or injury did not exist or was not caused or aggravated by the employment.
33. The claimant will be considered to have left employment voluntarily when such claimant gave the employer notice of an intention to resign and the employer accepted such resignation.

- a. Where the claimant gave the employer an advance notice of resignation which caused the employer to discharge the claimant prior to the proposed date of resignation, no disqualification shall be imposed from the last day of work until the proposed date of resignation; however, benefits will be denied effective the proposed date of resignation.

Iowa Admin. Code r. 871-24.25.

- D. The following scenarios are NOT considered disqualifying voluntary quits
1. Claimant was compelled to resign when given the choice of resigning or being discharged.
  2. Employer changes “contract” of hire (i.e., terms and conditions of employment):
    - a. This would include any change that would jeopardize the worker’s safety, health, or morals.
    - b. The change must be substantial in nature and could involve changes in working hours, shifts, remuneration, location of employment, drastic modification in type of work, etc.
      - i. Minor changes in a worker’s routine on the job would not constitute a change of contract of hire.
  3. Unsafe working conditions.
  4. Unlawful working conditions.
  5. Intolerable or detrimental working conditions.
  6. Claimant laid off for being pregnant, is still available for work and able to work.
  7. Claimant left because of illness, injury, or pregnancy upon the advice of a licensed and practicing physician, but when Claimant returned upon recovery, no suitable, comparable work was available.
  8. Claimant left because of an illness, injury, or allergy condition that *was* attributable to the employment.
  9. Claimant left for the necessary and sole purpose of taking care of a member of the claimant’s immediate family who was ill or injured, and after that member of the claimant’s family was sufficiently recovered, the claimant immediately returned and offered to perform services to the employer, but no work was available.

10. Mandatory retirement as of a certain age because of company policy or in accordance with an agreement between the employer and union.
- 11. The granting of a written release from employment by the employer at the employee's request is a mutual termination of employment and not a voluntary quit.**
  - a. However, this would constitute a period of voluntary unemployment by the employee and the employee would not meet the availability requirement of Iowa Code section 96.4(3).
12. When an employee gives notice of intent to resign at a future date, it is a quit issue on that future date.
  - a. Should the employer terminate the employee immediately, such employee shall be eligible for benefits for the period between the actual separation and the future quit date given by the claimant.
13. A claimant who, when told of a scheduled future layoff, leaves employment before the layoff date shall be deemed to be not available for work until the future separation date designated by the employer. After the employer-designated date, the separation shall be considered a layoff.
14. The claimant left employment for a period not to exceed ten working days or such additional time as was allowed by the employer, for compelling personal reasons and prior to leaving claimant had informed the employer of such compelling personal reasons, and immediately after such compelling personal reasons ceased to exist or at the end of ten working days, whichever occurred first, the claimant returned to the employer and offered to perform services, but no work was available.
  - a. However, during the time the claimant was away from work because of the continuance of this compelling personal reason, such claimant shall be deemed to be not available for work.
15. Claimant left work voluntarily rather than accept a transfer to another locality that would have caused a considerable personal hardship.
16. Claimant left work because the type of work was misrepresented to such claimant at the time of acceptance of the work assignment.
17. Refusal to exercise bumping privilege. An individual who has left employment in lieu of exercising the right to bump or oust a fellow employee with less seniority shall be eligible for benefits.

## V. The Unemployment Claim Process

### A. Filing a Claim (from [www.iowaworforce.org/ui/file1.htm](http://www.iowaworforce.org/ui/file1.htm))

Are you eligible to file an application for unemployment benefits? Do you meet these basic eligibility requirements?

- You are totally or partially unemployed.
- You have worked and earned a minimum amount of wages in work covered by unemployment insurance in the last 15 to 18 months.
- You have lost your job through no fault of your own.
- You are able and available for work.
- You are registered for work at your local IowaWORKS Center, unless work search is waived. You can register for work on-line by using the Employment Registration Services application.
- You are actively seeking work unless work search is waived.

What will you need to file your application? You need the following:

- Your Social Security number;
- The name, payroll address and telephone number of your most recent employer, and the beginning and ending dates you worked for that employer;
- An Alien Registration number if you are NOT a U.S. citizen or permanent refugee;
- A DD-214 (Member 4), if you served in the U.S. military during the last 18 months;
- A Standard Form 8 (SF-8), if you worked for the federal government in the last 18 months;
- The name(s) of any dependents that you claim as exemptions on your federal income tax return;
- You may claim your spouse as a dependent if her/his gross wages were \$120 or less in the week prior to filing your claim. Self-employment does not count as gross wages for dependent purposes.

Ways to File a Claim:

1. File an Unemployment Benefit Claim Online

The fastest, most efficient way to apply for benefits (file your initial claim) is online. The Internet filing option is available 24 hours a day, seven days a week -- it's always open!

To be able to file a claim online you must meet all of the following criteria:

- You must have worked in Iowa during the past 18 months (earned Iowa wages);
- You must not have an existing unemployment claim in any other state with money (benefits) still available;
- You must not have an existing Railroad Unemployment claim with any remaining money available;
- If you served in the U.S. military during the past 18 months, you **MUST** have an Iowa residence;

If you do not meet the criteria to file on-line, you should contact a local IowaWORKS Center for additional assistance in filing your unemployment claim.

## 2. File an Unemployment Benefit Claim at an IowaWORKS Center

You may file your initial claim for benefits at your local IowaWORKS Center. Many IowaWORKS Centers hold regularly scheduled group claim sessions and will help you complete the forms. Or, you can use a computer in the Center to file your application on-line.

## 3. File an Unemployment Benefit Claim Through Your Employer

Iowa Workforce Development has a program that allows employers to file an initial claim for a recently separated employee. Check with your employer to determine if they are participating in this program.

- B. Usually, the employer's first notice is through receipt of Form 65-5317 "**Notice of Claim.**"<sup>3</sup>
  1. Employer's response must be postmarked or received within 10 days from the date it was mailed to the employer.
  2. Employer must decide whether you want to protest the claim at this point.
    - a. Employer may include supporting documentation (e.g., termination paperwork) with the form.

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<sup>3</sup> Or, the employer can file a Notice of Separation (form 60-0154) whenever an individual leaves employment for any reason other than a lack of work.

3. If employer doesn't want to protest the claim, then employer will only have to fill out Box 10, 11, 12, 13, and/or 14, as applicable."
  - a. If employer does nothing, employer will be deemed to not protest the claim, and the employee's benefits will not be offset by any post-separation payments you made to him/her.
4. If employer wants to protest the claim, the options (grounds for protest) are:
  - a. Box 1: "The Individual never worked for this employer."
  - b. Box 2: "Quit voluntarily without good cause attributable to employer on: \_\_\_\_ [date]."
  - c. Box 3: "Left Employer to take other employment on: \_\_\_\_ [date]."
  - d. Box 4: "Worked in part of my business which was sold on: \_\_\_\_ [date]."
  - e. Box 5: "Discharged for misconduct in connection with work on: \_\_\_\_ [date]."
    - i. If you check this box, you must summarize the details of the misconduct in the "Remarks" section of the form.
  - f. Box 6: "Refused suitable work or recall to work on: \_\_\_\_ [date]."
  - g. Box 7: "Still employed" (Specify whether part-time, full-time, etc.)
  - h. Box 8: "Involved in a union labor dispute/strike on: \_\_\_\_ [date]."
  - i. Box 9: (Only for employees of educational institutions and athletes)
  - j. Box 10: "If the claimant worked during the week of their separation, please provide Number of hours worked that week"
  - k. Box 11: "Received vacation pay" (Specify the number of days/hours; the date paid; and the gross amount paid.)
  - l. Box 12: "Received severance pay, dismissal pay, separation allowance or wages in lieu of notice" (Specify the gross amount paid, and if applicable, the number of hours/days/weeks the gross amount represents.)
    - i. Employer also must state if there was a severance agreement, and if yes, you're supposed to attach a copy of it.
    - ii. Why are they asking for this?

- Under Iowa Code section 96.5(5), “[a]n individual shall be disqualified for benefits” “[f]or any week with respect to which the individual . . . has received payment in the form of . . . “wages in lieu of notice, separation allowance, severance pay, or dismissal pay.” *Id.* § 96.6(5)(a)(1). Likewise, Iowa Administrative Code rule 24.13(3) states that such payments “are fully deductible from benefits on a dollar-for-dollar basis.” Iowa Admin. Code r. 24-13(3)(c).
- BUT, IWD takes the position that if the employer gets a release from the employee in exchange for the money, then the money does not qualify as “wages in lieu of notice, separation allowance, severance pay, or dismissal pay.”
- “Put differently, the department concluded that a payment ‘with strings attached’ is not ‘severance pay.’” *FBL Fin. Group, Inc. v. Iowa Employment Appeal Bd.*, No. CVCV007901 (Polk County 2010). At least one Polk County Judge has agreed with IWD. *Id.*

m. Box 13: “Received Holiday Pay for \_\_\_\_ [date].”

n. Box 14: “Gross wages paid, YTD”

5. If employer protests the claim, IWD will schedule a telephonic **fact-finding interview**.

- a. You will receive a Notice of Unemployment Insurance Fact-Finding Interview containing the scheduled date, time, and the telephone number where you will be called for the interview. Complete instructions are provided on the notice you receive.
- b. The fact-finding interview is conducted by an IWD “representative,” not an administrative law judge. You don’t *need* to have a lawyer for this, but you may. It is very informal, and the representative maintains tight control over the proceeding.
- c. During the fact-finding interview, the IWD representative will ask the employer and claimant questions and allow both parties to explain his or her position on the issue. Both parties will be allowed to present witnesses and evidence during the interview.
- d. Although the rules of evidence do not apply during these interviews, if possible, you should still have witnesses with first-hand knowledge.

6. Within a few days of the fact-finding interview, IWD will make a **decision** regarding the claimant's eligibility to receive unemployment benefits, and the decision will be mailed to both the employer and the claimant.
  - a. If either party disagrees with the decision, he or she may file an appeal. Instructions for doing so are included on the reverse side of the decision.
  - b. The appeal may be mailed or faxed to the Appeals Section of IWD. It must be postmarked or received within 10 days of the mailing date of the initial decision.
7. **Appeal.** If the initial decision is appealed,<sup>4</sup> the Appeals Bureau will schedule a formal hearing with an administrative law judge.
  - a. Most hearings are held by telephone, but either party may request an in-person hearing.
  - b. You aren't required to have an attorney, but you should seriously consider it if the employee has an attorney.
  - c. Before a hearing, the parties may conduct pre-hearing discovery. The parties may also subpoena witnesses.
  - d. You will be notified by mail of the time and place (telephonic or in-person) of the hearing and of the matters to be resolved (e.g., whether the claimant was discharged for misconduct; whether the claimant voluntarily quit without good cause attributable to the employer)
  - e. Be sure to present witnesses with first-hand information of the events and supporting exhibits as needed.
  - f. Documents you submitted with the protest (Notice of Claim form) and for the fact-finding interview are *not* automatically part of the appeal record.
    - i. Let IWD know if you wish to have them retrieved and provided to both parties prior to the hearing.
    - ii. The administrative law judge cannot consider any documents that have not been provided to both parties prior to the hearing.
    - iii. If you have new exhibits, send them to the Appeals Section *before* the hearing.

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<sup>4</sup> You can download a Notice of Appeal form here: <http://www.iowaworkforce.org/ui/stawrs/60-0169.pdf>.

Iowa Workforce Development  
Appeals Section  
1000 East Grand Avenue  
Des Moines, IA 50319-0209  
Fax: 515-242-5144

- g. The Hearing will be *recorded*, and testimony given can be used to impeach witnesses in subsequent proceedings.
- h. The following are “tips” given by IWD to parties participating in fact-finding interviews and hearings:
  - i. Be prepared and familiarize yourself with the facts of the case by making an outline of the case for your personal reference and know the location of the material in your file so you can avoid searching for documents
  - ii. Stick to the pertinent facts, avoid irrelevant information
  - iii. Do not interrupt the person testifying. If statements are incorrect, make a note of them because you will have your chance to correct them later
  - iv. Ask questions of the other party and witnesses that will establish your case (if stories change, pursue them with more questions, not arguments or conclusions)
  - v. If you want the exhibits and summary statements from the fact-finding interview included in the record of an appeal hearing, make the request early enough to allow the Appeals Section to mail copies to both parties.
  - vi. If you do not understand the questions, acronyms or legal jargon when questioned by the IWD representative or the administrative law judge, immediately request clarification
  - vii. If you want to present new exhibits, be sure to have additional copies so the information is available to the opposing party (in the case of telephone interviews and hearings, send copies well in advance)
  - viii. Do not totally depend on affidavits because they can be challenged; the person who signed the affidavit cannot be questioned or challenged
  - ix. Present first-hand information for evidence, not hearsay (hearsay may be admitted but its reliability can readily be challenged)
  - x. Your last chance to get evidence into the record is at the administrative law judge level; second level

- xii. Do not withhold some evidence to use later because new evidence cannot be admitted after the appeal hearing unless you can convince the Employment Appeal Board or Court you need a remand for more evidence (you must have a good reason for not presenting your evidence earlier)
- xiii. If you do not know something, simply say so (grasping for answers could affect your credibility)
- xiv. When asked if there are any further comments before the record is closed make a closing statement of the facts and, if you know the pertinent law section or rule, quote it
- xv. Do not fraternize or visit with the IWD representative or the administrative law judge before, during, or after the interview or the hearing (the decision maker must not only be fair, but must also have every appearance of fairness)
- xvi. The IWD representative and the administrative law judge have the role of judge, not investigator; all participants must come forward with the facts so the decision can be made on all the facts available.
- xvii. Remember to call the Appeals Section to leave the names and phone numbers of your witnesses if they are not going to be in your office with you for the telephone hearing.

See also <http://www.iowaworkforce.org/ui/appeals/faqs.htm>.

- 8. After the hearing, you will receive a written **decision** from the ALJ. (This can come in days, weeks, or sometimes months—usually, it’s 10-14 days.)
  - a. The decision will state the important facts of the case, the legal conclusions and reasons for the decision, and an order stating the result of the decision. The decision may disqualify the claimant from receiving unemployment insurance benefits or may allow the claimant benefits that may be chargeable to the employer.
- 9. **Second-Level Appeal.** Either party may appeal the administrative law judge’s decision by notifying the Employment Appeal Board within 15 days from the date that the administrative law judge’s decision is mailed.
  - a. If filed by mail, the appeal must be postmarked within the 15-day period. Appeals may also be delivered in person to the Employment Appeal Board at the Lucas State Office Building in Des Moines, IA or to any IowaWORKS office.
  - b. You will have an opportunity to make further written argument to the Employment Appeal Board at this point (why the ALJ was right or wrong).

- c. You will have available to you a CD of the audio recording of the hearing, as well as the exhibits that were received by the ALJ at the hearing.
- d. The Employment Appeal Board does not hold hearings. The board decides each case by reviewing all the evidence that was presented to the administrative law judge. The board may affirm or reverse the administrative law judge's decision or may send the case back to the administrative law judge for further review or order a new hearing and decision if they feel the evidence in the administrative law judge's hearing is not sufficient or is incomplete.
- e. It usually takes 60 to 180 days from the date the appeal is filed to receive the Appeal Board decision. If either party is unhappy with the decision of the EAB, the next step is to file a petition for judicial review.

## **10. Judicial Review**

- a. A petition for judicial review is a civil action filed in the Iowa District Court for Polk County.
- b. At this stage, the Employment Appeal Board is actually named as a party (the Respondent) to the action, and the EAB's attorney advocates to uphold the decision of the EAB.
- c. There is no new evidence taken; only briefs are submitted.
- d. The District Court Judge can only reverse the decision of the EAB if the decision was (the ones likely to be raised in an unemployment proceeding are bolded):
  - i. Unconstitutional on its face or as applied or is based upon a provision of law that is unconstitutional on its face or as applied.
  - ii. Beyond the authority delegated to the agency by any provision of law or in violation of any provision of law.
  - iii. Based upon an erroneous interpretation of a provision of law whose interpretation has not clearly been vested by a provision of law in the discretion of the agency.
  - iv. Based upon a procedure or decision-making process prohibited by law or was taken without following the prescribed procedure or decision-making process.
  - v. The product of decision making undertaken by persons who were improperly constituted as a decision-making body, were motivated by an improper purpose, or were subject to disqualification.

- vi. **Based upon a determination of fact clearly vested by a provision of law in the discretion of the agency that is not supported by substantial evidence in the record before the court when that record is viewed as a whole.**
  - vii. Action other than a rule that is inconsistent with a rule of the agency.
  - viii. Action other than a rule that is inconsistent with the agency's prior practice or precedents, unless the agency has justified that inconsistency by stating credible reasons sufficient to indicate a fair and rational basis for the inconsistency.
  - ix. The product of reasoning that is so illogical as to render it wholly irrational.
  - x. The product of a decision-making process in which the agency did not consider a relevant and important matter relating to the propriety or desirability of the action in question that a rational decision maker in similar circumstances would have considered prior to taking that action.
  - xi. Not required by law and its negative impact on the private rights affected is so grossly disproportionate to the benefits accruing to the public interest from that action that it must necessarily be deemed to lack any foundation in rational agency policy.
  - xii. Based upon an irrational, illogical, or wholly unjustifiable interpretation of a provision of law whose interpretation has clearly been vested by a provision of law in the discretion of the agency.
  - xiii. **Based upon an irrational, illogical, or wholly unjustifiable application of law to fact that has clearly been vested by a provision of law in the discretion of the agency.**
  - xiv. **Otherwise unreasonable, arbitrary, capricious, or an abuse of discretion.**
11. After reading briefs (and perhaps hearing oral arguments), the District Court enters a judgment affirming or reversing the decision of the EAB.
  12. This judgment can be appealed to the Iowa Supreme Court (which will likely transfer the case to the Iowa Court of Appeals.)