

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KYLE N PLENDL
Claimant

SIOUX COUNTY
Employer

APPEAL 20A-UI-00280-S1-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 12/08/19
Claimant: Respondent (1)

Iowa Code § 96.5-2-a – Discharge for Misconduct
Iowa Code § 96.5(2)a – Disciplinary Suspension/Misconduct
Iowa Code § 96.3-7 – Overpayment
871 IAC 24.10 – Employer Participation in the Fact-Finding Interview

STATEMENT OF THE CASE:

Sioux County (employer) appealed a representative's December 31, 2019, decision (reference 01) that concluded Kyle Plendl (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 3, 2020. The claimant participated personally. The employer was represented by Chandler Surrency, Attorney at Law, and participated by Dan Altena, Sheriff, and Jamison Van Voorst, Captain Deputy Sheriff.

The employer offered and Exhibit One was received into evidence. The administrative law judge took official notice of the administrative file.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on June 5, 2017, as a full-time jailer. He received the employer's handbook when he was hired. On February 7, 2018, the employer issued the claimant a written warning for failure to attend mandatory training.

One of the employer's policies states: "All sworn and civilian employees are governed by the following general rules of conduct: Violation of any of these rules are considered sufficient cause for disciplinary action up to and including dismissal. Any officers or other employee who have reason to know they are the subject of a criminal or civil action immediately notifies their supervisor who in turn notifies the sheriff." Another policy states, "Employees who are the subject of internal compliance enforcement inquires may be relieved from duty and placed on administrative leave." The claimant did not read the policy about reporting the investigation to the employer.

In May 15, 2019, the Plymouth County Sheriff asked the claimant to come in for an interview. The claimant talked to the sheriff at approximately 7:00 p.m. and realized he was under investigation. That night, after the interview was over, the claimant did not call the employer. On May 16, 2019, at about noon, the claimant was not due to report for work yet when the captain deputy sheriff called the claimant and placed him on paid administrative leave for being under investigation.

The claimant was separated from employment because the sheriff thought the policy required him to be placed on leave while under investigation. He was also separated because he did not tell the employer, in less than sixteen hours, of the investigation.

On July 3, 2019, the employer notified the claimant that his leave would be changed to unpaid leave. The claimant used his vacation and compensatory time. He found a seasonal construction job to provide for his family.

The claimant filed for unemployment insurance benefits with an effective date of December 8, 2019. The employer provided the name and number of Dan Altena as the person who would participate in the fact-finding interview on December 30, 2019. On December 24, 2019, Mr. Altena notified the fact finder that he was not available and provided a written statement. The employer's document's did not identify the dates of infractions or submit the specific rule or policy that the claimant violated which caused the separation.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was not discharged for misconduct.

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(9) provides:

(9) Suspension or disciplinary layoff. Whenever a claim is filed and the reason for the claimant's unemployment is the result of a disciplinary layoff or suspension imposed by the employer, the claimant is considered as discharged, and the issue of misconduct must be resolved. Alleged misconduct or dishonesty without corroboration is not sufficient to result in disqualification. This rule is intended to implement Iowa Code section 96.5 and Supreme Court of Iowa decision, *Sheryl A. Cospers vs. Iowa Department of Job Service and Blue Cross of Iowa*.

The employer has the burden of proof in establishing disqualifying job misconduct. *Cospers v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The employer must establish not only misconduct but that there was a final incident of misconduct which precipitated the discharge. The last incident provided by the employer occurred on May 15 and 16, 2019, when the claimant did not report the investigation in less than about sixteen hours.

The claimant went into the interview with the Plymouth County Sheriff at 7:00 p.m. and exited at an unknown hour. The employer's discovery was delayed by a few hours. That delay was due to an isolated instance of the claimant's failure to read the policy on reporting investigations. There was no wrongful intent. The employer has failed to provide any evidence of willful and deliberate misconduct which was the final incident leading to the discharge and disqualification may not be imposed. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The representative's December 31, 2019, decision (reference 01) is affirmed. The claimant was discharged. Misconduct has not been established. Benefits are allowed, provided the claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/scn