

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

SHAWNA CLARK
Claimant

APPEAL NO. 09A-UI-11241-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

JASPER COUNTY
Employer

**Original Claim: 06/21/09
Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

Shawna Clark (claimant) appealed an unemployment insurance decision dated July 28, 2009, reference 01, which held that she was not eligible for unemployment insurance benefits because she was discharged from Jasper County (employer) for work-related misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on September 3, 2009. The claimant participated in the hearing. Deputy Sheriff John Pohlman and Jailers Jake Clymer, Lisa Vos, Stephanie Bonham, and Bob Guthrie participated in the hearing pursuant to subpoena. The employer participated through Sheriff Michael Balmer, Chief Deputy John Halferty, Chief Jailer Wendy Hecox, and Director of Human Resources Dennis Simon. Employer's Exhibits 1 through 17 and Claimant's Exhibits A and B were admitted into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

The issue is whether the employer discharged the claimant for work-related misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was employed as a full-time jailer from June 13, 2005 through June 26, 2009, when she was discharged for repeated rule violations and pursuant to the employer's progressive disciplinary policy. She previously worked for the employer on a part-time basis as a transport officer. The claimant certified at the time of hire that she read and understood the policies and procedures for the Jasper County Jail. She completed the Jasper County Sheriff's Office in-service training on July 11, 2008, in which she was re-trained on the employer's policies and procedures.

The employer has Class I working rules that are not as serious and will not result in discharge upon the first violation. Class II working rules are of a more serious nature and any violation will result in more serious disciplinary measures, up to and including discharge. The claimant was found to have violated three Class II rules. She deliberately falsified, altered, or supplied false

information on county records; she had two written warnings for offenses within a 12-month period; and she was insubordinate, disobeyed or refused to comply with reasonable instructions or authorized supervision.

The claimant was previously counseled on January 2, 2007 for joking around with inmates and failing to follow through on disciplinary actions when needed to keep the jail safe. On March 12, 2008, Sheriff Michael Balmer directed Chief Deputy John Halferty to conduct an internal investigation about the claimant's improper work conduct after the sheriff received complaints. The initial allegations were the result of an incident involving the claimant and inmate Tyler Oberhart. However, several other complaints developed as a result of the internal investigation and Chief Deputy Halferty formally investigated eight specific allegations of misconduct. Four allegations were sustained in full. Allegation #3 – the investigation showed a finding that the claimant spent excessive time with inmate Tyler Oberhart in comparison to other inmates. Allegation #4 – the investigation demonstrated the claimant allowed the port door to remain open when it was not needed and failed to report and/or document this rule violation. Allegation #6 – the investigation confirmed that it was likely that the claimant did receive information from Inmate Oberhart pertaining to his homicide case and she failed to report it or document it. Allegation #7 – the investigation revealed the claimant violated policy when she brought a pet snake into the jail to show inmate Oberhart and subsequently failed to fully disclose her actions when questioned about it. Allegation #8 – was founded in part as she did have permission to go home early but failed to complete her assigned tasks in connection with that permission.

Chief Deputy Halferty recommended to the sheriff that the claimant's employment be terminated based on his review of the investigation and its contents. He determined the claimant had serious judgment errors and retaining her could result in safety and security issues, as well as the possibility of civil litigation. Sheriff Balmer reviewed the claimant's responses to Chief Deputy Halferty's findings and conclusions and determined she had not accepted any responsibility for her actions but instead spread the blame on others. Sheriff Balmer concurred with Chief Deputy Halferty's conclusions and found that the claimant clouded the investigation further with unsupported statements and facts. However, instead of terminating the claimant, the Sheriff suspended her without pay for ten working days effective April 22, 2008. He indicated that corrective actions are intended to help improve job performance and he hoped the suspension would result in the claimant's improved ability to follow procedures and directions of others.

The claimant was counseled on September 10, 2008 for failing to fill out inmate's medical paperwork correctly. In a separate counseling on the same date, Chief Jailer Wendy Hecox questioned the claimant as to whether she was removing inmate's arrest histories from the jail as rumored. The claimant denied removing any information from the jail but did admit looking up information on a person to see the person's history. Chief Jailer Hecox advised the claimant there would be serious repercussions if she removed any information from the jail without authorization.

On September 26, 2008, Sheriff Balmer directed Chief Deputy Halferty to conduct an internal investigation into improper work performance and rule violations by jail officer Shawna Clark. The main issue concerned the claimant and other jail officers leaving the jail doors unlocked during the overnight shift on numerous occasions. Chief Deputy Halferty reviewed the jail meeting notes of February 28, 2008 in which the claimant and all other jail staff were advised that leaving jail doors unlocked was a rule violation and staff could be disciplined for it. The computer records of the jail doors were reviewed and revealed the overnight shift had left doors unsecured for extended periods of time. No violations were found on other shifts. On September 16, 2008, the control room door was open for over five hours and an entry door was

open for more than six hours. Chief Deputy Halferty concluded the investigation and recommended discipline warnings for three other employees. A report was submitted to the Sheriff on October 17, 2008 regarding two specific allegations against the claimant and both were sustained. Allegation #1 – the investigation revealed the claimant violated policy by allowing doors to remain unlocked for extended periods of time without legitimate purpose. Allegation #2 – the investigation confirmed the claimant failed to report these rule violations to supervisors.

Chief Deputy Halferty recommended the claimant's employment be terminated as a result of the current rule violations and prior discipline. Chief Deputy Halferty documented the minimum standards for jail personnel retention, which is as follows, "No employee shall be retained who has demonstrated inappropriate action beyond a reasonable degree, who is not psychologically fit for jail employment, or who has repeatedly failed to observe these rules." In a disciplinary notice dated October 21, 2008, Sheriff Balmer confirmed there were no acceptable reasons for doors being allowed to be left "unlocked" in the jail and there were no attempts to report violations of the door procedures. While there were several jailers involved in this breach of security rules, the claimant was the only one who made excuses for the doors being left open. Effectively immediately, the claimant was suspended for ten working days and was advised it was her last-chance disciplinary action.

The claimant grieved the disciplinary action and a hearing was held on May 1, 2009 at the Jasper County Courthouse in Newton, Iowa. Rex H. Wiant was chosen as the arbitrator from a list of arbitrators provided by the Iowa Public Employment Relations Board. Both sides had the opportunity to present complete cases, witnesses were sworn, and all evidence was subject to cross examination. At the end of the hearing, both parties agreed to submit letter briefs, which were received on June 8, 2009. The grievance was denied. Arbitrator Wiant concluded the Jasper County Sheriff's office had proper cause (just cause) when it issued the claimant a ten-day suspension and final warning for failing to lock doors. The Arbitrator found the discipline was appropriate in light of the claimant's disciplinary record.

Chief Jailer Hecox counseled the claimant on February 9, 2009 for releasing an inmate to the street without confirming the inmate left the jail shoes and uniform. The claimant released an inmate at 1:00 p.m. without obtaining the jail shoes and uniform. She called the Chief Jailer at 2:10 p.m. and asked if a uniform and shoes had been removed from the change room. The uniform was subsequently recovered from the pass through box at 2:25 p.m. The claimant said that she never checks for the personal property before the inmate leaves but instead gets the property box and uniform from the change room. She was advised to verify the shoes and uniform were present before releasing an inmate.

Sheriff Balmer contacted Chief Deputy Halferty on May 20, 2009 at approximately 7:30 a.m. to direct him to investigate a possible criminal allegation against the claimant. Inmate Eric Bullard escaped from the Marshalltown Residential Correctional Facility on Saturday, May 16, 2009. The claimant was scheduled to work the day shift on May 17, 2009, but she called in sick. The next two days were her regularly scheduled days off work. Inmate Bullard was subsequently arrested at the claimant's residence on Tuesday, May 19, 2009, at 4:00 p.m. Assistant County Attorney Scott Nicholson advised that he was considering criminal charges against the claimant based on this situation. He was also considering additional criminal charges against the claimant based on complaints of harassment and stalking. Eric Bullard lived with the claimant and her family. He fathered a son with the claimant's daughter Ceaira. Earlier in 2009, Eric moved out of the claimant's residence. After moving out, Eric and his mother, Rhonda Wright, complained of stalking and harassment by the claimant. The basis of the complaint was that the

claimant was sending text messages and following Eric around, telling him to return to her residence or he would not be able to see his son.

The claimant was placed on paid administrative leave on May 20, 2009 and ordered not to have any contact with inmate Bullard. Chief Deputy Halferty logged a case number (09-12849) for a criminal investigation. In addition to numerous interviews and police reports, phone records were requested. The claimant's, her daughter Ceaira's, and inmate Bullard's phone records were reviewed. Chief Deputy Halferty participated with Assistant County Attorney Nicholson regarding the harassment complaint. A supplemental report dated May 21, 2009 was prepared regarding the claimant contacting Chief Jailer Hecox about inmate Bullard being placed back on his medication so he "would stop telling lies." This was after the claimant had been ordered to have no contact with inmate Bullard and, at the same time, inmate Bullard filed a jail grievance about lies and misinformation. The employer reviewed over 150 pages of text messages in this investigation.

Chief Deputy Halferty's investigation concluded on June 23, 2009 with four allegations of misconduct. The first three were sustained and the fourth is pending dependent upon further review of criminal charges. Allegation #1 – the investigation confirmed the claimant failed to report information she had about inmate Bullard who had escaped from the Marshalltown Correctional Facility. The claimant had contact with inmate Bullard by phone after he left the correctional facility and had face-to-face contact with him on May 19, 2009. She did not contact anyone to report inmate Bullard's escape but did contact co-employees trying to determine if a warrant had been issued for him. Allegation #2 – the investigation confirmed the claimant failed to meet the minimum standards for retention as a Jasper County Sheriff's Office employee. No employee shall be retained who has demonstrated inappropriate action beyond a reasonable degree, who is not psychologically fit for jail employment, or has repeatedly failed to observe these rules. While no criminal charges were filed, the claimant did not make a reasonable effort to notify the Sheriff that she had been in contact with an escaped inmate and did not assist in his capture. Allegation #3 – the claimant was found to have been insubordinate and she interfered with a criminal and administrative investigation. When questioned, she was not truthful about contacting Jail Officer Clymer.

The claimant was taken off paid administrative leave on June 26, 2009, when she met with Sheriff Balmer. The Sheriff concluded the claimant's, "...actions or lack thereof, demonstrated inappropriate action beyond a reasonable degree." She repeatedly failed to meet the minimum standards necessary to be a Jailer and does not meet the minimum standard necessary for retention. Sheriff Balmer determined the claimant's employment as a Jasper County Jailer was terminated effective immediately.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a.

Iowa Code § 96.5-2-a provides:

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.

871 IAC 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.

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

The claimant was discharged on June 26, 2009 for repeated rule violations and pursuant to the employer's progressive disciplinary policy. She demonstrated early on that she was not willing to comply with the employer's policies and procedures. The claimant was warned repeatedly, but the warnings appeared to make little difference, as she continued to deny responsibility for her actions. Her insubordination is found to be egregious and her actions show a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

DECISION:

The unemployment insurance decision dated July 28, 2009, reference 01, is affirmed. The claimant is not eligible to receive unemployment insurance benefits, because she was discharged from work for misconduct. Benefits are withheld until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/kjw