

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**SHAWN M KELLY**  
Claimant

**APPEAL NO. 20A-UI-00380-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**AMERICAN ORDNANCE LLC**  
Employer

**OC: 12/15/19**  
**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

Shawn Kelly filed a timely appeal from the January 9, 2020, reference 01, decision that disqualified him for benefits and that relieved the employer's account of liability for benefits, based on the deputy's conclusion that Mr. Kelly was discharged on December 10, 2019 for misconduct in connection with the employment. After due notice was issued, a hearing was held on January 31, 2020. Mr. Kelly participated. Mike Allbee represented the employer and presented additional testimony through Chris Lopreato.

**ISSUE:**

Whether the claimant was discharged for misconduct in connection with the employment that disqualifies the claimant for unemployment insurance benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: American Ordnance, L.L.C., contracts with the United States Army to operate an ammunition production facility. Shawn Kelly was employed by American Ordnance, L.L.C. as a full-time Security Captain until December 10, 2019, when the employer suspended him and then discharged him from the employment for creating a potentially fatal security situation. Mr. Kelly began his employment in 1989 and was promoted to the supervisory position of Captain in 1993. Mr. Kelly last performed work for the employer on December 10, 2019. At the end of his shift on December 10, 2019, Mr. Kelly rolled through a stop sign as he exited the grounds of the ammunition manufacturing facility. A federal law enforcement officer pulled Mr. Kelly over for the purpose of addressing the traffic infraction. Rather than wait in his vehicle for the law enforcement officer, Mr. Kelly made the wantonly careless and potentially fatal decision to treat the situation as if it were a security drill. No drill had been announced and there was no drill. If there had been a drill, the employer would have announced it and further precautions would have been put in place, including making certain firearms contained no live rounds. Mr. Kelly was well familiar with the drill protocol and facilitated drills once or twice per month. Mr. Kelly rushed back to the armed law enforcement officer's vehicle, opened the door of officer's vehicle, and placed his hands on the officer as if he was going to assault the officer. Mr. Kelly startled the officer. Mr. Kelly then submitted to being handcuffed by the officer. Other security staff

responded to the scene. The employer suspended Mr. Kelly from his employment. The United States Army barred Mr. Kelly from the ammunition production site for two years. The employer then discharged Mr. Kelly from the employment.

### **REASONING AND CONCLUSIONS OF LAW:**

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).

The employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See *Lee v. Employment Appeal Board*, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See *Gimbel v. Employment Appeal Board*, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

While past acts and warnings can be used to determine the magnitude of the current act of misconduct, a discharge for misconduct cannot be based on such past act(s). The termination of employment must be based on a current act. See 871 IAC 24.32(8). In determining whether the conduct that prompted the discharge constituted a "current act," the administrative law judge

considers the date on which the conduct came to the attention of the employer and the date on which the employer notified the claimant that the conduct subjected the claimant to possible discharge. See also *Greene v. EAB*, 426 N.W.2d 659, 662 (Iowa App. 1988).

Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. See 871 IAC 24.32(4).

The evidence in the record establishes a discharge for misconduct in connection with the employment. Mr. Kelly's wantonly careless actions in connection with the December 10, 2019 situation placed him and others at risk of serious injury or death. Mr. Kelly's conduct amounted to interference with official acts and assault on a law enforcement officer. Despite his long tenure as a security official, Mr. Kelly chooses not to perceive or acknowledge the dangerous situation he created and chooses instead to focus on the federal law enforcement officer not being prepared for Mr. Kelly's aggressive conduct. Mr. Kelly's wantonly careless and aggressive conduct demonstrated a willful and wanton disregard of the employer's interests, including the employer's interest in maintaining its relationship with the United States Army. Mr. Kelly is disqualified for benefits until he has worked in and been paid wages for insured work equal to 10 times his weekly benefit amount. Mr. Kelly must meet all other eligibility requirements. The employer's account shall not be charged for benefits.

**DECISION:**

The January 9, 2020, reference 01, decision is affirmed. The claimant was discharged on December 10, 2019 for misconduct in connection with the employment. The claimant is disqualified for unemployment benefits until he has worked in and been paid wages for insured work equal to 10 times his weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account shall not be charged for benefits.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

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