

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

AMENDED

Appeal Number: 06A-UI-01640-HT
OC: 12/18/05 R: 03
Claimant: Respondent (2)

ROLAND J ROTTMAN
PO BOX 835
LISBON IA 52253

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

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.

CITY OF LISBON
ATTN CLERK
LISBON IA 52253

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.

TODD B WEIMER
PO BOX 77
ANAMOSA IA 52205

YOU MAY REPRESENT yourself in this appeal or you may 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. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

JAMES P CRAIG
PO BOX 1943
CEDAR RAPIDS IA 52406-1943

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5(2)a – Discharge/Suspension
Section 96.3(7) – Overpayment

STATEMENT OF THE CASE:

The employer, City of Lisbon (Lisbon), filed an appeal from a decision dated January 31, 2006, reference 02. The decision allowed benefits to the claimant, Roland Rottman. After due notice was issued, a hearing was held by telephone conference call on March 16, 2006. The claimant participated on his own behalf and with witnesses Libby Rottman and Donna Glen. The claimant was represented by Attorney Todd Weimer. The employer participated by City Administrator Sandy Deahl, Police Chief Rick Scott, Businessman Jim Cabbage, and City Council Member Randy Roberts. The employer was represented by Attorney James Craig. Exhibits One and B were admitted into the record.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Roland Rottman was employed by Lisbon beginning July 21, 1986. He was the superintendent of streets and had other general duties besides.

The claimant had been dealing with the city as a private citizen on two matters regarding his property. First, he wanted parking privileges restored in front of his house and wanted reimbursement for a retaining wall he had built on his property for an adjacent city project.

On December 12, 2005, Mr. Rottman talked with Chief of Police Rick Scott about the parking matter while the two of them were shoveling snow from the sidewalk in front of the police station. The chief told him the no parking ordinances would remain in effect by his home. The claimant was upset about this because he had asked for the chief's intervention on this matter some time before and the information that no help would be forthcoming was relayed to him the afternoon before the city council meeting, leaving him little time to prepare to fight the issue at the meeting.

At that point Mr. Rottman became very agitated, saying it was "bull shit" and asking "what fucking idiot did this?" About that time, City Administrator Sandy Deahl came upon the two of them at that point and asked what was going on. Mr. Rottman further expressed his displeasure over the parking situation and when Ms. Deahl asked him to calm down he said, "fuck it," and that he was sick and going home. He pointed his finger at her, threw his snow shovel down and walked off, turning back only to tell Ms. Deahl he wanted his "fucking \$3,000.00," referring to the payment for the retaining wall. He left work and did not return that day. The payment for the wall was remitted to his wife, Libby Rottman, later that day.

Ms. Deahl issued a written warning to the claimant the next day for unprofessional conduct. He refused to sign it but did receive a copy of it. The warning notified him his job could be in jeopardy if there were any further incidents. On December 14, 2005, the mayor received a complaint from businessman Jim Cabbage about an incident with Mr. Rottman. Mr. Cabbage had complained before about the city snow plows pushing snow onto his private property. He went to the city garage and asked the claimant, who operated the snow plows, how he would like it if Mr. Cabbage loaded up all the snow in his truck and dumped it on his front lawn. The claimant asked how Mr. Cabbage would feel if he were to knock him on his ass? From that point, the claimant engaged in a lengthy diatribe about the injustices the city had perpetrated on him regarding the parking and the retaining wall. Finally, the matter came back to the issue of the snow on his property and Mr. Cabbage said he would deal with it through his attorney.

At that point, the claimant started "yelling and screaming like a crazy person." Mr. Cabbage acknowledged he had known Mr. Rottman for many years and had never seen him "out of control" like this. He left and phoned the mayor who referred the matter to Ms. Deahl. The city administrator asked Chief Scott to take a statement from Mr. Cabbage, which he was finally able to do on December 16, 2005. The report, and Mr. Cabbage's written statement, were submitted to Ms. Deahl immediately afterward.

Ms. Deahl consulted informally with the mayor and city council members regarding the incidents, seeking a consensus as to the proper course of action. The council members all felt the claimant should be discharged, however, the final decision was up to the city administrator. Ms. Deahl took into consideration the claimant's long tenure with the city and the fact that his

work had always been satisfactory. In addition, everyone whom the claimant had confronted acknowledged it was uncharacteristic behavior for him to use profane language, throw things, make threats and raise his voice stridently. She made the decision to suspend him for 30 days without pay and notified him of this on December 19, 2005.

Roland Rottman has received unemployment benefits since filing a claim with an effective date of December 18, 2005.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes he is.

Iowa Code section 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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

871 IAC 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.

As indicated in the above Administrative Code section, the criteria for disqualification for a suspension is the same as for a discharge. It requires substantial, job-related misconduct. Mr. Rottman was suspended for confronting the chief of police, the city administrator and a private citizen with profane, abusive, and threatening conduct. While it is true no actual threats of physical violence were uttered by the claimant, his pointing fingers, throwing shovels, slamming doors and "yelling" did create a hostile situation.

Everyone characterized Mr. Rottman's behavior on these two days to be uncharacteristic of his usual conduct. Nonetheless, a past free from complaints of verbal abuse and inappropriate conduct is not an excuse for his actions on December 12 and 14, 2005. The employer did have the right to expect the claimant to conduct himself in a professional manner, especially in public while on city property and performing his job duties, and in his interaction with citizens.

The administrative law judge understands the claimant was most perturbed by what he felt were the injustices inflicted upon him by the city, but this does not constitute a license to verbally abuse co-workers and citizens. The city policies do call for disciplinary action up to and including discharge for "unsatisfactory work performance or conduct" and the claimant's conduct was certainly unsatisfactory. The suspension was for conduct not in the best interests of the employer and the claimant is disqualified.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The claimant has received unemployment benefits to which he is not entitled. These must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's decision of January 31, 2006, reference 02, is reversed. Roland Rottman is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount, provided he is otherwise eligible. He is overpaid in the amount of \$1,330.00.

bgh/kkf/tjc