

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

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URBANDALE IA 50322

Appeal Number: 04R-UI-06585-SWT  
OC: 08/03/03 R: 02  
Claimant: Respondent (2)

**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, 4<sup>th</sup> 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.

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.

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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-2-a – Discharge  
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated February 20, 2004, reference 07, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on July 12, 2004. The claimant participated in the hearing. Dick Rogerson participated in the hearing on behalf of the employer. Exhibits One and Two were admitted into the record.

FINDINGS OF FACT:

The claimant worked full time for the employer as a security officer from January 13 until January 30, 2004. When he was interviewed for the job, the claimant was informed that he had to be licensed by the Iowa Department of Public Safety (Department) in order to work as a security officer. Dick Rogerson, the director of human resources, asked him if he had ever been arrested and he indicated he had been charged with harassment in July 2003. Rogerson checked with the Department and was informed that a simple harassment offense would not automatically disqualify someone from being licensed as a security guard.

The claimant was required to complete an application for a security guard identification card. All questions had to be answered by checking either "yes" or "no" in the appropriate box. Dick Rogerson asked the claimant if he had ever been convicted of harassment. The claimant said "no" and Rogerson recorded that response on the application. Rogerson did not remember what the claimant had said in the interview.

On January 29, 2004, the Department sent a letter to the employer stating the claimant's application was rejected and that the employer could no longer employ the claimant. A background check by the agency revealed a conviction for harassment. The application was rejected based on the falsification of the application not the conviction itself. Since the employer could not employ the claimant as a security guard without a license, the claimant was discharged.

The claimant filed for and received a total of \$3,002.00 in unemployment insurance benefits for the weeks between January 25 and May 10, 2004.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

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).

The claimant's false answer to a question on his security officer application was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. The claimant's testimony that he did not think simple harassment was the same as harassment is not credible. Work-connected misconduct as defined by the unemployment insurance law has been established in this case.

The next issue in this case is whether the claimant was overpaid unemployment insurance benefits.

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.

As a result of this decision, the claimant is disqualified from receiving unemployment insurance benefits effective January 25, 2004, and was overpaid \$3,002.00 in benefits for the weeks between January 5 and May 10, 2004.

#### DECISION:

The unemployment insurance decision dated February 20, 2004, reference 07, is reversed. The claimant is disqualified from receiving unemployment insurance benefits until he has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. He is overpaid in the amount of \$3,002.00.

saw/b