

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHAEL J SPRINGMAN
Claimant

APPEAL NO. 12A-UI-11869-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

IOWA STATE ASSOC OF COUNTIES
Employer

**OC: 09/02/12
Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

Michael Springman filed a timely appeal from the September 24, 2012, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on October 29, 2012. Mr. Springman participated. Captain Dean Naylor represented the employer. Exhibits One through Eight were received into evidence.

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: Michael Springman was employed by the Muscatine County Jail as a full-time Corrections Corporal for 11 years until September 6, 2012, when the employer discharged him for violation of the employer's policy regarding Conflict of Interest – Business Transactions with Inmates, for dishonesty, and for other related policy violations. The conflict of interest policy provides as follows:

No person working in a jail shall transact any business with any prisoner nor shall any person working in a jail arrange through another party any business transaction with a prisoner. The jail shall have a written code of ethics that the jail provides to all employees.

At minimum, the code shall:

- a. Prohibit staff from using their official positions to secure privileges for themselves or others.
- b. Prohibit staff from engaging in activities that constitute a conflict of interest.

On May 1, 2012, Mr. Springman acted on a business arrangement he made with an inmate at the Muscatine County Jail. Mr. Springman used the inmate's debit card and PIN to withdraw \$695.00 from the inmate's bank account. Mr. Springman then deposited the inmate's funds, minus \$100.00, in the inmate's account at the Muscatine County Jail. To make the deposit at

the Jail, Mr. Springman represented that he was depositing the funds under the inmate's grandmother's name. For his efforts, Mr. Springman received a \$100.00 fee.

On June 1, 2012, Mr. Springman traveled out of county and withdrew \$700.00 from the inmate's account. Mr. Springman then deposited those funds in his personal checking account, where they remained as of his discharge on September 6, 2012.

The conduct came to light in August, when another inmate reported the matters to jail staff. On July 15, 2012, Sergeant Baars interviewed the inmate who had brought the matter to the Jail administration's attention. On that same day, Sgt. Baars prepared his report and forwarded it to Capt. Naylor. Capt. Naylor then forwarded the report to the Chief Deputy for assignment of the matter to a Detective for further investigation. On August 28, the matter was assigned to Detective Mike Channon for further investigation. On August 29, Detective Channon interviewed the inmate who had entered into the arrangement with Mr. Springman.

On September 4, 2012, Detective Channon interviewed Mr. Springman. Mr. Springman denied ever assisting an inmate in getting funds. After Detective Channon showed Mr. Springman the photo from the ATM machine that showed him withdrawing the money in May, Mr. Springman admitted to withdrawing the money in May, purchasing two money orders, signing the grandmother's name and depositing the money in the inmate's jail account under the grandmother's name. Mr. Springman denied anything to do with withdrawing money from the inmate's account in June. After Detective Channon showed Mr. Springman a video showing him at the bank at the time of the withdrawal, Mr. Springman admitted taking money from the inmate's bank account and depositing it in his own. Mr. Springman indicated that he still had the money in possession.

During the interview on September 4, Detective Channon told Mr. Springman that he could face discharge from the employment. Later that day, Captain Naylor suspended Mr. Springman from the employment. The next day, Captain Naylor participated in a hearing with Mr. Springman. At that hearing, Mr. Springman admitted to the allegations against him. On September 26, the employer discharged Mr. Springman from the employment.

REASONING AND CONCLUSIONS OF 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.

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). When it is in a party's power to produce more direct and satisfactory evidence than is actually produced, it may fairly be inferred that the more direct evidence will expose deficiencies in that party's case. See Crosser v. Iowa Dept. of Public Safety, 240 N.W.2d 682 (Iowa 1976).

The weight of the evidence indicates that the final conduct that factored into the discharge was Mr. Springman's intentional dishonesty during the September 4 investigative interview and his continued possession of the inmate's funds up to the time of his discharge. Both matter were enough, separately, to establish a current act of misconduct in connection with the employment. However, the evidence establishes additional misconduct based on Mr. Springman's agreement to get money for the inmate, his profit from that, and his unauthorized withdrawal from the inmate's bank account in June 2012. Each of these matters involved a violation of the employer's policies and indicated willful and wanton disregard of the employer's interests.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Springman was discharged for misconduct. Accordingly, Mr. Springman is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The employer's account shall not be charged.

DECISION:

The Agency representative's September 24, 2012, reference 01, decision is affirmed. The claimant was discharged for misconduct. The claimant is disqualified for unemployment benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit allowance, provided he meets all other eligibility requirements. The employer's account will not be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs