

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RICHARD L MORTENSON
Claimant

APPEAL NO. 10A-EUCU-00621-S

**ADMINISTRATIVE LAW JUDGE
DECISION**

PER MAR SECURITY SERVICES
Employer

OC: 08/05/07
Claimant: Appellant (1)

Section 96.5-2-a – Discharge
871 IAC 24.32(1) – Definition of Misconduct

STATEMENT OF THE CASE:

The claimant appealed a department decision dated July 19, 2010, reference 07, that held he was discharged for misconduct on May 26, 2010, and that denied benefits. A hearing was held in Spencer, Iowa, on September 15, 2010. The claimant and a witness, Larry Arends, participated. The employer submitted documentation, Exhibit 1, as evidence for the record.

ISSUE:

Whether the claimant was discharged for misconduct in connection with employment.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witness and having considered the evidence in the record, finds: The claimant began employment as a full-time security officer assigned to Menards in Spencer, Iowa, on May 4, 2010. Prior to hire, the claimant submitted an application for employment, and he was interviewed on April 29.

During the application process, the claimant asked an employer representative how far he should go back in listing a criminal conviction. The employer answered ten years. The claimant listed a DUI conviction.

During the interview, the claimant gave the same answer regarding his DUI conviction. Based on the employment and interview, the claimant was offered the job assignment at Menards subject to a conditional employment form. The form states that if any adverse background or criminal history information is received, the claimant will be terminated.

When the employer investigations department received his criminal background record, it noted that he omitted criminal convictions for: public intoxication 9/29/1984; public intoxication on 6/4/1988; OWI on 11/13/1988; OWI on 9/23/2001; and, 5th degree theft by check (4 counts) on 8/25/2002. During the hearing, the claimant admitted he forgot to disclose to the employer his criminal 5th degree theft conviction in 2002 that involved four insufficient funds checks involving \$50 or less. The claimant denies he listed his DUI conviction as back in 1999.

The employer elected to participate by submission of documentation.

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 administrative law judge concludes the employer has established that the claimant was discharged for misconduct in connection with employment on May 26, 2010, for falsification of his employment application.

In order for the application falsification to constitute misconduct, it must be materially related to job performance. See Larson v.EAB, 474 N.W.2d 570 (Iowa 1991). Security officer is a position of trust and integrity. A theft conviction involves dishonesty that is materially related to the issue of trust. The failure of the claimant to list his fifth degree conviction on his employment application and/or disclose it during the interview is application falsification and misconduct. Since the claimant agreed to a conditional employment hire subject to the background check, the investigation finding of the falsification and discharge on May 26 constitutes a current act of misconduct.

DECISION:

The department decision dated July 19, 2010, reference 07, is affirmed. The claimant was discharged for misconduct May 26, 2010. Benefits are denied until the claimant requalifies by working in and being paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/kjw