**IOWA WORKFORCE DEVELOPMENT**
**UNEMPLOYMENT INSURANCE APPEALS**

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

**JOHN D HEIDENREICH**
Claimant

**DEPT OF HOMELAND SECURITY/TSA**
Employer

**APPEAL NO: 09A-UCFE-00019-DT**

**ADMINISTRATIVE LAW JUDGE DECISION**

**OC: 07/26/09**
**Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

John D. Heidenreich (employer) appealed a representative's August 27, 2009 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment from Department of Homeland Security/TSA (employer). After hearing notices were mailed to the parties' last known addresses of record, a telephone hearing was held on September 22, 2009. The claimant participated in the hearing. Tony Gotto appeared on the employer's behalf and presented testimony from four other witnesses, Danise Daville, Brian Williams, Mike Pommier, and Bill Eid. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

Was the claimant discharged for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant started working for the employer on January 12, 2003. He worked full time as a transportation security officer at the employer's Des Moines, Iowa facility. His regular schedule was 4:45 a.m. to 1:15 p.m., Monday through Friday. His last day of work was July 13, 2009. The employer discharged him on July 22, 2009. The stated reason for the discharge was failure to follow instructions, lack of truthfulness, and absence without leave.

On June 3 the employer had served the claimant with a notice of suspension due to a prior attendance problem, most recently an initial no-call, no-show that became a late call for an absence. As a result of this, the claimant was on notice that any further problem in this regard could result in additional discipline including discharge.

On June 11 the claimant was a no-call, no-show for the start of his shift. He had overslept. He awoke around 6:00 a.m. He called the lead officer on duty and reported that there had been a family emergency, that his sister had been severely injured in a car accident, and that he had driven to Pekin, Illinois to be with his family. None of this was true. He then repeated this story several times over several days, both verbally and emails, to various managers. The employer

had immediately indicated to the claimant that it would need some type of documentation to verify this information in order to excuse the late call and absence. The claimant was given until June 23 to provide this information.

On the morning of June 23 the claimant met with Mr. Pommier, one of the managers, for the purpose of providing any additional information prior to the employer determining what if any further discipline should be imposed for the June 11 absence and late call. The claimant again maintained his story of the car accident during that meeting, but indicated he could not get any official report due to pending legal issues. Mr. Pommier had the claimant verify the jurisdictional information regarding where the claimant asserted the accident had occurred, and indicated that the employer would make a direct contact to that law enforcement to verify the claimant's assertion. After the conclusion of the meeting and after the claimant had gotten off work for the day, he called Mr. Pommier back and admitted that his story was false. Mr. Pommier indicated that this information would be reviewed by the appropriate managerial levels to determine what actions would result.

On July 13 the employer served the claimant with notice of proposed removal for his initial no-call, no-show on June 11, his unexcused reason for the absence, and his misrepresentation regarding the absence. The claimant had seven days to respond to the notice, which he did not do. He took vacation days covering the next seven days. On July 22 the employer issued its notice of removal.

**REASONING AND CONCLUSIONS OF LAW:**

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982); Iowa Code § 96.5-2-a.

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445 (Iowa 1979); Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. 871 IAC 24.32(1)a; Huntoon, supra; Henry, supra. In contrast, 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. 871 IAC 24.32(1)a; Huntoon, supra; Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

The claimant did not assert until the hearing that the true reason for his late call on June 11 was for a medically diagnoses reason. The claimant's late assertion of this contention after his elaborate fabrication of another claimed reason is not credible. The claimant's making of a false report to seek to cover up an unexcused reason for an absence after he had been given a suspension for attendance, as well as the extensive promulgation of that false report itself,

shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. He was on notice of there being pending discipline regarding the absence as well as the false report at least as of June 23, the same day he had last reiterated the false report, so the discharge was for a current act as required to establish work-connected misconduct. 871 IAC 24.32(8); Greene v. Employment Appeal Board, 426 N.W.2d 659 (Iowa App. 1988). The employer discharged the claimant for reasons amounting to work-connected misconduct.

**DECISION:**

The representative's August 27, 2009 decision (reference 01) is affirmed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of July 22, 2009. This disqualification continues until the claimant has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged.

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Lynette A. F. Donner
Administrative Law Judge

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Decision Dated and Mailed

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