

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DENNIS RUPPE
Claimant

CITY OF COUNCIL BLUFFS
Employer

APPEAL 15A-UI-13799-JP-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 11/22/15
Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the December 11, 2015, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on January 6, 2016. Claimant participated. Employer participated through director of human resources Jon Finnegan.

ISSUE:

Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a plant operator from October 3, 2000, and was separated from employment on December 12, 2015, when he was discharged.

Claimant was discharged for bringing a firearm onto city property on November 20, 2015. Claimant had no prior warning for similar conduct. The employer has a written policy that prohibits employees from possessing firearms on their person anywhere on city property, unless express permission from their department head. Claimant received a copy of the policy upon hire. Mr. Finnegan believes the express permission would need to be in writing. Claimant did not have express permission from his department head. Mr. Finnegan is not aware of any in public works employee that has authorization to carry a firearm on city property. The employer has a progressive disciplinary policy, but the employer is allowed to skip steps based on the conduct.

On November 20, 2015, claimant arrived at work and exited his vehicle with a firearm on city property. A car had followed claimant to his work area because of an incident that had occurred on the road on his way to work. Claimant was on city property (waste water treatment plant parking lot) when he exited the vehicle with a firearm. The other driver had not left the area when claimant exited his vehicle. The Iowa State Patrol was contacted and a trooper interviewed both claimant and the other driver. Claimant met with his supervisor and he was suspended without pay pending investigation. The department head conducted the

investigation. During the pre-termination hearing (after the department head's investigation), Mr. Finnegan asked claimant if he had a firearm and claimant refused to answer the question. Mr. Finnegan testified that according to the police report, claimant told a trooper that he did take his firearm out of his vehicle. The police report also stated that the trooper seized a firearm from claimant's vehicle.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct. Benefits are denied.

It is the duty of an administrative law judge and the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge, as the finder of fact, may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other evidence you believe; whether a witness has made inconsistent statements; the witness's conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996).

This administrative law judge assessed the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and used my own common sense and experience. This administrative law judge finds the employer's version of events to be more credible than claimant's recollection of those events.

Iowa Code § 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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990). Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988).

The employer is entitled to establish reasonable work rules and expect employees to abide by them. The employer has a written policy prohibiting possession of firearms on city property without the express permission from the employer. Claimant was aware of this policy. On November 20, 2015, claimant exited his vehicle, on city property, with a firearm after another driver had followed him to his job site. Claimant's argument that he had verbal permission from his former superintendent is not persuasive. Claimant did not present any written documentation of his permission to possess a firearm on city property. Mr. Finnegan testified he was not aware of any public works employee having permission to possess a firearm on city property. Furthermore, claimant's own testimony that he was not supposed to talk about his permission to have a firearm on city property does not make it reasonable for him to believe he had been given actual authority to possess a firearm on city property. It is also noted that claimant did not contact law enforcement because of the other driver's actions on the road, instead he exited his vehicle with a firearm.

It is clear from the evidence that claimant had a firearm in his vehicle, which was on city property, on November 20, 2015. It is also clear that the trooper took claimant's firearm out of his vehicle. Furthermore, according to Mr. Finnegan's testimony, the trooper reported that claimant stated he removed the firearm from his vehicle on November 20, 2015, which would have occurred during the incident with the other driver and on city property.

The employer has a duty to protect the safety of its employees. Claimant's conduct was contrary to the best interests of the employer and a direct violation of a known policy. The employer has presented substantial and credible evidence that claimant possessed a firearm on city property outside of his vehicle on November 20, 2015 without the express permission of his department head in violation of the employer's written policy. Benefits are denied.

DECISION:

The December 11, 2015, (reference 01) unemployment insurance decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Jeremy Peterson
Administrative Law Judge

Decision Dated and Mailed

jp/pjs