

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

AMY YARRINGTON
Claimant

APPEAL NO: 09A-UI-11160-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

POWESHIEK COUNTY
Employer

OC: 06/28/09
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Amy Yarrington (claimant) appealed an unemployment insurance decision dated July 27, 2009, reference 01, which held that she was not eligible for unemployment insurance benefits because she was discharged from Poweshiek County (employer) for work-related misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on September 1, 2009. The claimant participated in the hearing with Attorney Matt Reilly. The employer participated through Poweshiek County Sheriff Thomas Sheets. Employer's Exhibits One through Seven and Claimant's Exhibits A and B were admitted into evidence. 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:

The issue is whether the employer discharged the claimant for work-related misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a full-time dispatcher/jailer from December 27, 2006 through June 30, 2009 when she was discharged for failing to comply with a mental fitness for duty examination. The employer's work rules dictate that normal duty assignments for deputies and staff must be accomplished to a high standard. Negligence, inefficiency or incompetence cannot be tolerated. Violation of this work rule is considered to be a major violation. The first duty a dispatcher/jailer has is to provide for the protection of life and property by dispatching and coordinating local law enforcement, emergency medical, fire and rescue and related public safety services. The individual in an extremely safety sensitive position must be able to meet many physical and cognitive demands.

The job description for a dispatcher/jailer requires satisfactory language ability and interpersonal communication:

"Requires the ability to make proper decisions and prompt responses in a variety of situations ranging from routine to those that are emotionally charged and potentially very serious. Must be able to communicate effectively with all kinds of people in situations or

circumstances that are time sensitive, life threatening and stressful. Requires the ability to speak clearly and distinctly with poise, voice control and confidence in stressful situations, using appropriate pauses and emphasis. Correct pronunciation and variations in word order and the ability to hear diverse voice communications. Requires the application of knowledge of human behavior when confronted with hostile or combative inmates in providing for their custody and security. Must be proficient in understanding and applying acquired subject matter knowledge in such areas as state jail standards, prison rights, and county policies, as well as the ability to endure physical and mental abuse. Requires constant alertness and attention to detail.”

“Occupational hazards are those generally associated with mental and kindred stress encountered in operating critical information equipment during severe accidents, family situations, suicides, weather related disasters and related incidents. Occupational hazards are also those generally associated with the care, custody and security of individuals who represent a temporary or permanent danger to society and whose behavior and potential for violence can vary from situation to situation.”

During the last year of employment, the claimant demonstrated some questionable behavior along with some potential substance abuse issues. She was frequently insubordinate, had difficulty getting along with co-workers, and failed to follow established policy when taking time off work. The claimant was involved in a personal relationship with Deputy Jeff Morrison at one time and was also involved with Dave Kline, who was a former police officer in the city of Grinnell and who had applied for employment with Poweshiek County.

The claimant had a verbal dispute with Deputy Morrison on September 2, 2008 and called Deputy Mark Martin to her aide. Deputy Martin reported that he believed the claimant had been drinking that night. The claimant received a written reprimand on September 3, 2008 for being insubordinate to the sheriff. She missed work in October 2008 after breaking up with Deputy Morrison. She reported she was stressed out and could not eat or sleep. There was an incident on an unknown date in which the claimant trashed Deputy Morrison’s computer and Deputy Smith was called about it. However, no service call was entered.

The Des Moines Police were called to a domestic situation involving the claimant and Mr. Kline at a hotel in Des Moines on February 20, 2009. Deputy Morrison requested permission from Chief Deputy McNaul to take time off to go pick up the claimant from Des Moines. Chief Deputy McNaul issued the claimant a verbal warning for the incident.

The claimant called the chief deputy crying on March 17, 2009 at 9:40 p.m. and asked him to come to her house. She indicated she was having problems with Mr. Kline. When Chief Deputy McNaul arrived, the claimant was crying, holding a can of beer, and her speech was slurred. Neither the claimant nor Mr. Kline said what the problem was. The chief deputy told the claimant she was jeopardizing her career by the repeated need and involvement of the authorities. Chief Deputy McNaul finally took Mr. Kline to his parent’s house and then returned to the claimant’s house to drop off her purse and cigarettes, which she left in his car. Chief Deputy McNaul advised the claimant to speak to a domestic violence advocate but she said they would only tell her what she already knows. The claimant stated that the problem was that she was supposed to be taking depression medication but stopped taking it because of the side effects. The claimant told Chief McNaul on March 18, 2009 that she and Mr. Kline were back together. Chief McNaul issued the claimant a written warning since she had previously received a verbal warning. He reported that the claimant did not appear to be affected by anything said about this affecting her work performance.

The claimant requested the evening of April 29, 2009 off work and the sheriff was advised by a citizen that the claimant and Mr. Kline were in a heated dispute. Mr. Kline was in the front yard holding a bottle of whiskey and the neighbor reported everything in the claimant's house had been "trashed." The claimant called in the next day crying and stating she needed eight hours of sick leave.

The claimant received a letter from the Board denying her grievance on an unrelated shift bidding issue and she called the chief deputy at 6:30 p.m. crying and had to go home sick. She was scheduled to work 4:00 p.m. to midnight on May 27, 2009 but called and stated she would be off work for an extended period of time and would drop off a doctor's excuse. The claimant was reportedly taking time "off until Mr. Kline deployed." Her medical leave went from May 27, 2009 through June 17, 2009.

Sheriff Thomas Sheets advised the claimant on May 28, 2009 that she needed to provide an explanation as to why her medical condition requires her to be off work for the above dates. The claimant had until June 2, 2009 to provide that information to the sheriff. On that date, she gave the sheriff the same information she had previously given and reported that she was not required to provide the requested information. Sheriff Sheets advised the claimant that while she could qualify for leave under the Family and Medical Leave Act, her leave would not be approved for sick pay until she provided the requested information.

Sheriff Sheets issued a memorandum on June 11, 2009 in which he documents that being a dispatcher/jailer is a highly stressful and safety sensitive position. Employees must be able to multi-task in a stressful environment when everything is happening at once. The dispatcher/jailer is responsible for preserving life and property while directing others how to best handle the emergency.

A letter was provided to the claimant by the sheriff dated June 11, 2009 in which she was advised she needed to attend a fitness for duty examination to be done by Dr. Eva Christiansen, Clinical Psychologist. The cost of the exam and the claimant's time would be paid for by the employer. A second letter was sent on June 16, 2009 advising the claimant she had until June 24, 2009 to make her appointment. Sheriff Sheets told the claimant he needed satisfactory assurances and documentation that she could safely perform all of her job duties. The claimant made the appointment for June 30, 2009 and July 2, 2009. She went to Dr. Christiansen's office but refused to sign the document which included the following paragraph, "Your participation in this evaluation is voluntary, in the sense that I will not conduct the evaluation without your signature on this document. You also have the right to stop the evaluation at any time. There may be consequences if you stop, so it is in your best interest to consult with an attorney before ending your participation in the evaluation." Dr. Christiansen documented the claimant declined the examination and Sheriff Sheets discharged the claimant on June 30, 2009 as a result.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. 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.

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.

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 establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. Infante v. IDJS, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). Poor work performance is not misconduct in the absence of evidence of intent. Miller v. Employment Appeal Board, 423 N.W.2d 211 (Iowa App. 1988).

In the case herein, the claimant was discharged for her refusal to submit to a mental fitness-for-duty examination. The employer had a responsibility to request this examination based on the claimant's past questionable behavior and the safety sensitive position in which she works. This is not only for the claimant's safety and welfare, but also for the other staff and the public at large. While the claimant may have found this examination to be personally intrusive, she refused it with the knowledge that it would be the end of her employment. The claimant's refusal to comply with the fitness for duty examination demonstrates an intentional

and substantial disregard of the employer's interests. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

DECISION:

The unemployment insurance decision dated July 27, 2009, reference 01, is affirmed. The claimant is not eligible to receive unemployment insurance benefits because she was discharged from work for misconduct. Benefits are withheld until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/pjs