

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DANIEL J PEARCY**  
Claimant

**APPEAL NO. 10A-UI-08342-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**DECATUR COUNTY**  
Employer

**OC: 05/02/10**  
**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Claimant filed a timely appeal from a representative's decision dated June 4, 2010, reference 01, which denied benefits based upon his separation from Decatur County. After due notice a telephone hearing was held on July 28, 2010. Claimant participated personally. The employer participated by Ms. Heather Stevenson, Program Supervisor, Intensive Supervision Program.

**ISSUE:**

The issue is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

**FINDINGS OF FACT:**

Having considered all of the evidence in the record, the administrative law judge finds: Daniel Percy was employed by Decatur County from March 2009 until April 26, 2010 when he was discharged from employment. Mr. Percy held the position of full-time juvenile tracking officer and was paid by the hour. His immediate supervisor was Heather Stevenson.

Mr. Percy was discharged when the county believed that he had not demonstrated the qualities required for a juvenile tracking officer during his probationary period of new employment.

Mr. Percy had received some counselings from his previous supervisor related to his failure to adequately contact juveniles under his supervision and had been counseled about the accuracy of his reporting. The claimant had also been cautioned about making inappropriate comments to other workers. The claimant had engaged in banter with co-workers and did not believe that his comments were offensive. After being counseled on these issues, Mr. Percy attempted to improve his performance and limited his comments to others.

The final incident that caused the claimant's discharge took place on April 24, 2010. On that day a juvenile under Mr. Percy's supervision asked for access to the county vehicle that he

and Mr. Percy had been riding in. The juvenile desired to get his lunch out of the vehicle. The claimant handed the keys to the vehicle in the presence of Ms. Stevenson for the purpose of allowing the student access to obtain his lunch. Ms. Stevenson instructed the claimant that he should not be giving the keys to a county vehicle to the adolescent. Mr. Percy initially replied, "Oh, he's not going anywhere." The claimant retrieved the keys from the juvenile as per instructions and no further comment was made on the issue that day.

Subsequently, upon reviewing the matter, the employer determined that Mr. Percy's actions were not only ill advised but were also a policy violation because adolescents should not be given keys to county vehicles and because Ms. Stevenson believed that Mr. Percy's response was insubordinate. A decision was then made to terminate Mr. Percy while he remained in his new hire probationary status.

### **REASONING AND CONCLUSIONS OF LAW:**

The question before the administrative law judge is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits. It does not.

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.

871 IAC 24.32(5) provides:

(5) Trial period. A dismissal, because of being physically unable to do the work, being not capable of doing the work assigned, not meeting the employer's standards, or having been hired on a trial period of employment and not being able to do the work shall not be issues of misconduct.

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 insurance benefits. Misconduct serious enough to warrant the discharge of an employee may not necessarily be serious enough to warrant the denial of unemployment insurance 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. of Appeals 1992).

The employer in this case made a management decision to terminate Mr. Pearcy because he had made an error in allowing a juvenile under his supervision the keys to a county vehicle so that the juvenile could retrieve his lunch from the vehicle. The evidence in the record establishes that Mr. Pearcy was not aware that his conduct was a violation of employer rules or that it could result in his termination from employment. The claimant had witnessed other employees in his same capacity provide keys under similar circumstances. The claimant had also witnessed an individual who had provided training to Mr. Pearcy provide keys to a juvenile under circumstances that were similar. While claimant's comment to his supervisor that the adolescent "won't go anywhere" may have been in hindsight ill advised, the record does not establish that Mr. Pearcy's comments were intended to undermine Ms. Stevenson's authority or to be otherwise insubordinate. The claimant had been previously warned about other policy issues and had attempted to comply with the policies after being warned or advised of them.

While the employer's decision to terminate Mr. Pearcy prior to the expiration of his new probationary status may have been a sound decision from a management viewpoint, intentional misconduct sufficient to warrant the denial of unemployment insurance benefits has not been shown. Benefits are allowed, providing the claimant meets all other eligibility requirements of Iowa law.

**DECISION:**

The representative's decision dated June 4, 2010, reference 01, is reversed. The claimant was discharged for no disqualifying reason. Unemployment insurance benefits are allowed, providing the claimant meets all other eligibility requirements of Iowa law.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

pjs/pjs