

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DUANE L JAMESON
Claimant

APPEAL NO. 13A-UI-02308-VS

**ADMINISTRATIVE LAW JUDGE
DECISION**

ADAIR COUNTY
Employer

OC: 01/20/13
Claimant: Appellant (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from a representative's decision dated February 20, 2013, reference 01, which held that the claimant was not eligible for unemployment insurance benefits. After due notice, a hearing was held on August 27, 2013, in Creston, Iowa. The claimant participated personally. The claimant was represented by Shane Michael and A. Zane Blessum, Attorneys at Law. The employer participated by Mindy Schaefer, Adair County Auditor, and Nick Kauffman, Adair County Engineer. The following individuals were witnesses for the claimant: Brett Lewis Terhaar, DVM; Gerald L Ford; and Jeff Carl Clayton. James R. Wittenwyler, then senior auditor for the Office of the Auditor of State for the State of Iowa was a witness for the employer. Employer's Exhibit One was received into evidence.

ISSUE:

Whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer is a county located in the State of Iowa. The claimant worked for the county for seventeen years and three months. Initially he worked as a truck driver and was later promoted to bridge crew leader. He then served as secondary roads superintendent for one year and eight months. The claimant's last day of work was January 23, 2013. He was placed on administrative leave on that day. He was given the option of quitting or being terminated on January 25, 2013. The claimant elected to submit his resignation in lieu of termination on January 25, 2013.

The series of events that led to the claimant's termination began on March 8, 2012. The employer received an anonymous letter that the claimant and another employee named Cindy Butcher were pocketing cash that they were receiving from the sale of old iron and used bridge plank. (Exhibit 1, p.20) The writer also stated that this had been going on for three years and was getting worse. (Exhibit 1, p. 20) Ms. Schaefer was unaware of what the writer was talking

about and after meeting with other county officials, the matter was turned over to the State Auditor and the Iowa Attorney General.

An investigation was done by the State Auditor in conjunction with the Iowa Department of Criminal Investigation. The period of the investigation was December 5, 2001, through December 31, 2011. The date of the auditor's report is December 7, 2012. The report was released on February 1, 2013. The Auditor concluded that there had been \$19,734.11 of undeposited collections. The undeposited collections identified \$19,309.11 of checks issued to the claimant and Cindy Butcher by a local salvage vendor for the sale of scrap metal from the Engineer's Office. The claimant's job included the replacement of roadway pipe culvert, related materials and bridges. The claimant would sell scrap metal acquired during the job to Jeff Clayton, the local salvage vendor. Approximately once a year, Mr. Clayton would "settle up" and pay either the claimant or Ms. Butcher for the scrap iron. The total of the checks actually issued to the claimant was \$13,347.10. (Exhibit 2, p.10) The largest check in the amount of \$7672.60 was issued to the claimant in December of 2011. (Exhibit 2, p.10) The claimant was interviewed as part of the investigation and the claimant knew that an investigation was ongoing.

The secondary roads department, which is the department the claimant worked for, used at least some money collected for what the Auditor termed an "unauthorized 'slush' fund." (Exhibit 1, p. 15) This fund paid for Christmas parties; retirement gifts; lottery tickets; and treats. Not all of the deposits could be traced, that is, shown to have been used for these purposes. The Auditor concluded that such unauthorized accounts, which are replenished with funds which should have been deposited with the County Treasurer should not be maintained by any County Office or Department. (Exhibit 1, p. 15)

The claimant knew that the fund should not have been in existence. In December 2006, Nick Kauffman, became aware of the fund and specifically told the claimant that the fund was against the law. Mr. Kauffman left the county's employment shortly thereafter. The fund was not stopped. When Mr. Kauffman returned in April 2012, he finally put an end to the fund.

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.

Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. One of the most fundamental duties owed to the employer is honesty. The employer has the burden of proof to show misconduct.

The claimant is not eligible for unemployment insurance benefits. The evidence established that that the claimant was actively involved in collecting money for a slush fund that sold scrap metal belonging to the employer and using that money for improper purposes such as Christmas parties, lottery tickets, and retirement gifts. The claimant knew that that what he was doing was improper. Nick Kauffman specifically told the employees in 1996, when he left his job, that what they were doing was illegal and yet the practice persisted until April 2012, when Mr. Kauffman returned to his job. The claimant made no effort to obtain a legal opinion on the funds legality and was apparently content to rely on an off the cuff remark that what happens in Adair County is no business of the state. The claimant was misappropriating funds that belonged to the county for personal business. This is misconduct. Benefits are denied.

DECISION:

The decision of the representative dated February 20, 2013, reference 01, is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/css