

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**WARREN REISNER**  
Claimant

**APPEAL NO. 07A-UI-04853-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**FAYETTE COUNTY**  
Employer

**OC: 04/22/07 R: 04  
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Warren Reisner (claimant) appealed an unemployment insurance decision dated May 9, 2007, reference 01, which held that he was not eligible for unemployment insurance benefits because he was discharged from Fayette County Sheriff's Office (employer) for work-related misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 30, 2007. The claimant participated in the hearing. The employer participated through Sheriff Marty Fisher, Jail Administrator Dave Carmondy and employer representative Marcy Schneider. 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 detention officer for the Fayette County Jail from January 25, 1997 through April 20, 2007 when he was terminated per the employer's progressive disciplinary policy. In an unrelated matter, he was suspended for one day on September 22, 2004 for passing notes to inmates. He received his first verbal warning on February 22, 2005 for a poor attitude, swearing and lack of respect for his co-workers. Additional complaints prompted a meeting with Sheriff Fisher on June 28, 2005 and a second warning was issued for the same problems of using profanity and disrespect for his co-workers. In another unrelated matter, the claimant was again suspended on September 16, 2006 for booking in three prisoners when they were injured. The three individuals had been involved in a motor vehicle accident and should have been sent to the hospital before being booked. The claimant continued to have problems with swearing or using profanity and he was sent home on October 18, 2006. He was suspended on the following day and advised his job was in jeopardy. The final incident occurred on approximately April 18, 2007 when the claimant argued with his co-workers and repeatedly using the word "fuck." He accused the other employees of sucking up to administration when they completed their regular job duties. It was determined he had

been given plenty of chances to improve but his disruptive conduct had continued and he was discharged 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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The claimant was discharged after repeated warnings for using profanity and showing disrespect to his co-workers. His conduct was detrimental to the moral of the other employees and he failed to show any improvement even after being warned. The claimant's actions were a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to

expect of the claimant. 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 May 9, 2007, reference 01, is affirmed. The claimant is not eligible to receive unemployment insurance benefits because he was discharged from work for misconduct. Benefits are withheld until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

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Susan D. Ackerman  
Administrative Law Judge

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Decision Dated and Mailed

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