

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROBERT B STEWART
Claimant

APPEAL NO. 12A-UI-04263-A

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA DEPARTMENT OF CORRECTIONS/
IOWA MEDICAL CLASSIFICATION CNTR**
Employer

**OC: 03/11/12
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Robert B. Stewart filed a timely appeal from an unemployment insurance decision dated April 9, 2012, reference 01, that disqualified him for benefits. After due notice was issued, a hearing was held in Cedar Rapids, Iowa, on May 17, 2012, with Mr. Stewart participating. Assistant Associate Warden Russell Ort and Correctional Supervisor 1 Thomas Stoller testified for the employer, Iowa Department of Corrections. The employer was represented by Thomas Kuiper of TALX UC eXpress. Mr. Kuiper participated in the hearing by telephone. All witnesses were present in the hearing room.

ISSUE:

Was the claimant discharged for misconduct in connection with the employment?

FINDINGS OF FACT:

Robert B. Stewart was employed as a correctional officer at Iowa Medical Classification Center from May 21, 2007, until he was discharged March 7, 2012. Mr. Stewart worked the midnight shift in a dormitory-style unit in which the doors to the rooms, each of which could contain several inmates, were unlocked. His primary duty was to make rounds 16 times during his overnight shift. Over a period of 30 days from late January through late February 2012, Mr. Stewart logged all rounds as having been completed when in fact he completed only three per shift. Lieutenant Thomas Stoller received an anonymous note indicating that a midnight shift officer was not completing rounds. Lieutenant Stoller interviewed Mr. Stewart on February 23, 2012. Mr. Stewart did not deny the facts that he had failed to make rounds and had logged them as having been completed. Lieutenant Stoller and Assistant Associate Warden Russell Ort then reviewed security tapes going back to late January. Security tapes revealed that Mr. Stewart had been logging rounds that he did not complete for approximately 21 workdays.

Mr. Stewart was on an unrelated suspension when they completed the review of the security tapes. Mr. Ort was placed on paid administrative leave when he returned from suspension on the evening of March 6, 2012. He was told to report to Mr. Ort at 10:00 a.m. on March 7. Mr. Ort discharged him at that time.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence establishes that the claimant was discharged for misconduct in connection with the employment. It does.

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.

Mr. Stewart argued that these events constituted an isolated incident of poor judgment. The evidence, however, establishes a continuing pattern of falsification of records and failure to complete assigned duties. The evidence is sufficient to establish misconduct. Benefits are withheld.

DECISION:

The unemployment insurance decision dated April 9, 2012, reference 01, is affirmed. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw