

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DAVID SMITH
Claimant

APPEAL NO: 12A-UI-09961-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

BLACK HAWK COUNTY
Employer

OC: 07-22-12
Claimant: Appellant (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the August 10, 2012, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on September 20, 2012. The claimant participated in a portion of the hearing before either being disconnected or hanging up. The administrative law judge attempted to call the claimant back and was only able to leave a message on his voice mail instructing him to call back within six minutes or the hearing would continue without him. The claimant did not call within that timeframe or at any time during the following two days. Gerald Clyde, Director of Human Resources; Sheriff Tony Thompson; and Captain Rick Abben participated in the hearing on behalf of the employer.

ISSUE:

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

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time deputy sheriff in the jail division for Black Hawk County from July 6, 2009 to July 23, 2012. On July 12, 2012, the claimant was the sole officer assigned to directly supervise one of the jail pods containing 46 inmates. An outside contractor was in the pod to install inmate phones and entered the pod through an unorthodox door not generally used to enter or exit the pod. The door leads to the fire tower which contains an exterior door leading out of the jail. After the contractor entered the pod the fire tower door was left wide open. Video shows the claimant spoke to the contractor and jail maintenance staff about the purpose for their visit and the employer was told the claimant asked if he should continue with the daily activities of the pod with the contractor and maintenance present and was told it was fine to do so. Consequently, the claimant opened the individual cell doors and allowed all inmates out into the pod with full knowledge the door was open at 2:00 p.m. The video of the next hour showed the claimant sitting at the desk with no active management of the inmates; he did not exhibit more vigilance due to the fact the door was open. He got up once to get an inmate for a professional appointment. As the only deputy in charge of the pod the claimant was trained to manage inmate activity by moving among the inmates to prevent assaults, etc.

He was expected to interact with the inmates rather than sit at the desk. The claimant used his smart phone to read and post to his Facebook page and used the employer's computer to conduct class work for courses he was taking at Upper Iowa University. At 2:48 p.m. inmate Mask went upstairs undetected, through the open door to the exterior door, and escaped from the jail. It was the first escape in the 15 or 16 year history of that facility. His escape resulted in an 18-hour manhunt during which time Mask stole four vehicles, robbed a Medicap Pharmacy in Traer, and led officers on a 50-minute chase through three counties with four squad cars sustaining damage before Mask was apprehended. After the escape and capture of Mask, every inmate in the pod, Mask, the claimant and the master control officer were all interviewed about the incident. The claimant was placed on paid administrative leave July 12, 2012, and interviewed by Internal Affairs July 18, 2012. The claimant was given a Garrity Waiver, which stated no charges would be filed against him but he had to be completely truthful about the incident to insure a similar situation would not occur again. During the interview the claimant failed to tell the truth on two occasions; he stated he did have his cell phone with him in the pod but did not use it, which is a breach of security and policy, and denied using the employer's computer for personal business. Mask told investigators the claimant was on his phone on his Facebook page when he went upstairs and made his escape. Sheriff Tony Thompson viewed the video and was frustrated by the claimant's lack of supervision. Sheriff Thompson had the IT department check the pod computer and they discovered the claimant's class work on the employer's computer during the time in question. During the investigation and interviews with other inmates four inmates told the employer they told the claimant the door was open and he stated he was aware of it but there was "no way" any inmate could escape. While interviewing the claimant July 18, 2012, the employer had already found and printed hard copies of the claimant's Facebook page and activities from July 12, 2012, and also knew the claimant was using the employer's computer improperly to do course work. The claimant stated he had his back turned and was talking to another inmate when the escape occurred which was contradicted by the video which showed the claimant sitting at the desk when the escape took place. The claimant also stated he was very busy and was entering inmate movements into the computer which was also not true because only one inmate had a professional visit between 2:00 and 3:00 p.m. When asked if inmates told him the fire tower door was open the claimant stated he did not recall. Because of the claimant's actions, and more specifically the fact he lied to investigators about the situation, the employer terminated his employment July 23, 2012.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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.

The claimant failed to perform the essential functions of his job which resulted in the first inmate escape from that jail since it opened 15 or 16 years ago. He allowed inmates into the pod with the fire tower door open and neglected to monitor the inmates at all, let alone more closely because the door was open. He was on his Facebook page on his smart phone and was using the employer's computer to perform college course work, instead of watching the inmates, both of which were violations of the employer's policy and then, despite the Garrity Waiver, was dishonest about those situations when interviewed by the employer. As a law enforcement officer he was required to testify in court and provide truthful information and his decision to attempt to deceive the employer made him a liability and untrustworthy when called on to testify in court proceedings. His actions violated the public trust, professionalism and accountability expected by the citizens of Black Hawk County. The claimant was negligent in allowing the inmate to escape, and also demonstrated a dereliction of duty, inattentiveness, inefficiency, incompetency, and most importantly, in the view of the employer, was dishonest and failed to accept responsibility for his actions when interviewed and disregarded reasonable rules, policies and procedures required by the employer. The claimant's actions placed the residents of Black Hawk and surrounding counties in an unsafe position as demonstrated by Mask's actions after the escape. Under these circumstances, the administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Benefits are denied.

DECISION:

The August 10, 2012, reference 01, decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/css