

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

JOSEPH K JOHNSON
Claimant

IA DEPT OF CORRECTIONS/OAKDALE
Employer

APPEAL 17A-UI-03586-JCT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/05/17
Claimant: Appellant (1)

Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from the March 24, 2017, (reference 01) unemployment insurance decision that denied benefits based upon separation. The parties were properly notified about the hearing. A telephone hearing was held on April 27, 2017. A short recess was held prior to testimony to allow the employer to receive and review proposed claimant exhibits. The claimant participated personally. The employer participated through Malia Maples, non-attorney/hearing representative for Employer's Edge. Russ Ort, security director, testified. Claimant Exhibits A, B, C, and D were admitted over objection. Employer Exhibits 1 through 24 were received into evidence without objection. The administrative law judge took official notice of the administrative records including the fact-finding documents. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full-time as a corrections officer beginning in 2013, and was separated from employment on March 17, 2017, when he was discharged (Employer Exhibits 1-2). Prior to discharge, the claimant was suspended effective March 2, 2017 (Employer Exhibit 3).

At the time of hire, and during the claimant's employment, he received and signed for acknowledgment of the employer's rules, policies and code of conduct (Employer Exhibit 9, 10). Specifically, the employer had policies and procedures which stated: "Employees are charged with the responsibility of complying IDOC's institution, and judicial district department's work rules, orders, policies and procedures, along with municipal, county, state, and federal laws, and the applicable rules of regulatory agencies that apply to them." And "employees are expected to be familiar with their job description, essential functions performance standards and job duties" (Employer Exhibit 18) The employer's personal ethics include "employees shall obey all

applicable federal, state, and local laws and the policies of IDOC, institutions or judicial districts (Employer Exhibits 18-19) as well as promptly report any loss of driving privileges within 24 hours of occurrence (Employer Exhibit 19). Employees are also prohibited from unauthorized cell phone use (Employer Exhibit 20)

The claimant's job requirements also included possession of a valid driver's license, and the claimant signed off acknowledging it as a requirement for continued employment (Employer Exhibits 6, 7, 8). Prior to discharge, the claimant was issued various disciplinary actions in 2014 through 2016 for incidents related to attendance, tardiness, being inattentive to duties (Employer Exhibits 11-15).

The claimant was discharged based upon three incidents which occurred in close proximity. The first involved the suspension of the claimant's driver's license after he was cited in his personal vehicle on December 23, 2016, for speeding 25 miles over the speed limit. The claimant pled guilty to the offense and asserted he did not know his driver's license was suspended due to the incident (Claimant Exhibit A). Part of the claimant's job duties included transporting himself and offenders to and from medical care. Consequently, he drove both his personal and agency vehicles without a valid driver's license until February 7, 2017, when the claimant was cited by law enforcement for driving on a suspended license (Claimant Exhibit C). The claimant applied for a work permit to drive to and from work the following day, which required information from the employer to complete. At that time, the employer was made aware of the claimant's loss of driving privileges.

On February 10, 2017, the claimant was aware he did not have a valid driver's license. He stated he had applied for a worker's permit, but did not have a copy. He also stated he did receive a directive via email by the employer directing him not to operate any agency vehicle based upon his suspended license status (Employer Exhibits 4-5) but he drove himself back to the employer facility. The claimant offered conflicting explanations during the hearing, stating that he believed a worker's permit included driving himself to/from work, and doing any driving that his job required. He later stated at the hearing that he had tried to tell Captain Van Trump that he could not drive. The employer asserted the claimant offered a third explanation while being investigated for the incident, which was that he had not yet received the email directing him not to drive, before he actually drove on February 10, 2017.

Then while dropping off the car keys on the premises of the corrections facility, the claimant was observed on surveillance footage, in the breakroom, retrieving his cell phone from his pocket, typing on his phone and returning the phone to his pocket. Because of security reasons, cell phones are not permitted at the employer's correction facility, and employees are advised to lock them up in lockers while on the premises. The claimant acknowledged that he could have his cell phone at the medical facility which he was assigned and stated the use of his personal cell phone that evening was an "honest mistake" (Claimant Exhibit B).

While the employer was conducting its investigation, a third incident occurred on February 27, 2017, involving the use of restraints with an offender receiving medical care, on the claimant's shift. Customary practice includes having one leg restrained to the bed while an offender is receiving medical care. This is for the safety of the officers and public at large. If an offender's restraints are removed, prior approval must be received. A log book containing entries about change in the offender's restraint status is also required. The claimant and a peer changed posts, and were supervising an offender that had to make frequent trips to the restroom due to medication. The peer had removed the leg restraint to allow the offender to get up and go to the restroom quickly but had not requested permission or documented the change in restraint status. The claimant assumed that permission had been granted but did not verify with the peer

or in the log, nor did he accurately record in the log book that when he arrived to his shift that the offender was in an unrestrained status. The claimant asserted he was discharged more severely disciplined than his peer, who only received a suspension.

As a result of the three incidents, the employer conducted a lengthy investigation and conducted pre-disciplinary hearings, to allow the claimant to present mitigating evidence. Upon completion of investigation, the claimant was discharged.

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 § 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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

"This is the meaning which has been given the term in other jurisdictions under similar statutes, and we believe it accurately reflects the intent of the legislature." *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d, 445, 448 (Iowa 1979).

In an at-will employment environment, an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, it incurs potential liability for unemployment insurance benefits related to that separation. The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. IDJS*, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984).

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.* Assessing the credibility of the witnesses and reliability of the evidence in conjunction with the applicable burden of proof, as shown in the factual conclusions reached in the above-noted findings of fact, the administrative law judge concludes that the employer has satisfied its burden to establish by a preponderance of the evidence that the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The credible evidence presented is the claimant was made aware of the employer's policies, procedures, and code of conduct/ethics, (Employer Exhibit 9, 10), which required the claimant to notify the employer of a change of driver's license status, to comply with all laws, to not use personal cell phones in unauthorized areas, and to maintain a valid driver's license as a job requirement (Employer Exhibits 6-8, 18-20). The claimant violated the law in his personal vehicle on December 23, 2016, when he was observed exceeding speed 25 miles over the speed limit. He then pled guilty to the offense. The administrative law judge is not persuaded the claimant was unaware that his license was revoked but even if he did not know, (due to a miscommunication or possible DOT error) he was aware when he was issued a citation on February 7, 2017, for driving on a suspended license (Claimant Exhibit C).

The claimant then knowingly violated an employer directive not to drive agency vehicles (Employer Exhibits 4, 5) as he drove without a valid driver's license on February 10, 2017. The administrative law judge did not find the conflicting explanations offered by the claimant to be credible; on the one hand that he did not know that a work permit would not include operating agency vehicles, versus that he did not receive the directive about not driving until after he had (as he reported to the employer) but then also saying he told the employer he could not drive (yet drove anyway.) The claimant is personally responsible for ensuring he is operating a vehicle, whether in his personal or at work, lawfully. The claimant's actions of driving the vehicle that day without a valid driver's license violated both the employer directive and the law, as he did not possess a valid driver's license. It cannot be ignored that the claimant worked for

the corrections department, which would logically hold its employees to a standard of complying with local laws and regulations.

Further, the claimant continued to violate the employer's policy on February 10, 2017, by accessing his personal cell phone on the corrections premises, which is an obvious security concern. The employer's policies, which the claimant signed receipt of, require the claimant to know the policies and rules that apply to him. The administrative law judge was not persuaded by the claimant's testimony that ignorance of the laws of the road, rules of work permits or agency policies would mitigate non-compliance for the employer's reasonable policies or state laws. Nor does the evidence support the claimant was singled out or that disparate application of the policies and rules were applied to him.

Even if the claimant's actions of using his cell phone and failing to properly log a restraint status on February 27, 2017, amounted to "honest mistakes" as the claimant asserted, the administrative law judge is persuaded the claimant knew or should have known his failure to maintain a valid driver's license and then knowingly operate an agency vehicle on February 10, 2017, after being directed not to do so, were contrary to the reasonable policies and expectations of the employer. The employer has established the claimant was discharged for misconduct. Benefits must be denied.

DECISION:

The March 24, 2017, (reference 01) unemployment insurance 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.

Jennifer L. Beckman
Administrative Law Judge

Decision Dated and Mailed

jlb/rvs