

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TIMOTHY B RULAPAUGH
Claimant

APPEAL NO. 08A-UI-01476-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

SECURITAS SECURITY SERVICES
Employer

**OC: 01/13/08 R: 04
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Securitas Security Services USA (employer) appealed a representative's February 4, 2008 decision (reference 01) that concluded Timothy Rulapaugh (claimant) was discharged and there was no evidence of willful or deliberate misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for February 27, 2008. The claimant participated personally. The employer was represented by Beverly Lamb, Hearings Representative, and participated by Melissa Sepanic, Branch Manager; Jeffrey Gremmer, Field Supervisor/Flex Officer; and Andrew Drake, Field Supervisor. The employer offered and Exhibit One was received into evidence.

ISSUE:

The issue is whether the claimant was discharged for 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 hired in the late spring of 2007, as a full-time overnight security officer. The claimant was given a copy of the employer's handbook at his orientation. The employer issued the claimant a written warning in November 2007, for not following post orders. Law enforcement arrived at the facility and the claimant allowed them to enter to find an employee for which there was an outstanding warrant for arrest. The claimant was confused by the appearance of law enforcement. He should have had an employee escort them into the building.

On January 3, 2008, the claimant was supposed to sit in a small car in a parking lot of an abandoned building for twelve hours from 6:00 p.m. to 6:00 a.m. The claimant is 6 foot 5 inches and weighs approximately 270 pounds. The employer allowed the claimant to recline the seat slightly so that the claimant could fit in the car. He is allowed to take a disc player or laptop with him in the car. He is allowed to walk to an outhouse on the property. He is not allowed to leave the property for his breaks and must continue to watch and listen during his breaks. The claimant allowed himself to turn the car on at ten minutes to the hour so that he would have heat. He always turned the car off on the hour.

At 2:50 a.m. on January 4, 2008, the claimant turned the car on to get some heat. He does not remember what happened for twenty minutes. A supervisor drove up and saw the claimant reclining with his head on his left shoulder. The supervisor shone his light in the car and found the claimant was breathing. The supervisor drove off some distance and called the claimant's cellular telephone at 3:10 a.m. The claimant answered the telephone and spoke to the supervisor.

On January 7, 2008, the employer terminated the claimant for sleeping on the job. The claimant is not certain he was sleeping because he had never fallen asleep before. The claimant thought it could be a medical or carbon monoxide issue.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for 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 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). Sleeping on the job on two occasions, one year apart, can constitute job misconduct. The grounds for discharge listed under a contract of hire are irrelevant to determination of eligibility for Job Service benefits in a

misconduct situation. Hurtado v. Iowa Department of Job Service, 393 N.W.2d 309 (Iowa 1986). 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). The employer did not provide sufficient evidence of job-related misconduct at the hearing. The one incident of sleeping on the job in the conditions present at the time of the incident does not constitute misconduct. The employer did not meet its burden of proof to show misconduct. Benefits are allowed.

DECISION:

The representative's February 4, 2008 decision (reference 01) is affirmed. The employer has not met its proof to establish job-related misconduct. Benefits are allowed.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/css