

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

**JAMES H CUNNINGHAM
17911 – 195TH AVE
LEON IA 50144**

**BRIDEWELL LLC
4202 ROLEKE DR
BETHANY MO 50144**

**Appeal Number: 05A-UI-06958-HT
OC: 05/29/05 R: 03
Claimant: Appellant (1)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, James Cunningham, filed an appeal from a decision dated June 24, 2005, reference 02. The decision disqualified him from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on July 25, 2005. The claimant participated on his own behalf. The employer, Bridewell, participated by Warden Frank Scarcello.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: James Cunningham was employed by Bridewell

from January 17 until May 27, 2005. He was a full-time watch commander at a correctional facility, working midnight to 8:00 a.m.

On May 24, 2005, Warden Frank Scarcello reported to the facility at 4:40 a.m. pursuant to a report that Mr. Cunningham might be sleeping on the job in the commander's office. This was not the case, but he did discover the claimant had left around 2:00 a.m. He did not notify anyone he was leaving, but collected his keys from the main control office and exited the facility through the lawyer's visiting office, not through the sally port as required.

Mr. Scarcello then discovered a note the claimant had left on his desk. It indicated he regretted coming to work for the facility, he felt like he was "babysitting" and was going to file a harassment and hostile work environment claim. He did not report for his next scheduled shift but did call in on May 26, 2005, stating he was returning a call from someone at the facility who had called but not left a message. He talked with the warden who listened to his complaints but they also discussed the rule violations committed by the claimant.

A letter was written on May 27, 2005, notifying the claimant he was being discharged for leaving his watch without permission, jeopardizing the safety of staff and inmates, and other violations of the operating procedures.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes he is.

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.

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 claimant was discharged for violating known policies and procedures. As the watch commander, he left without notifying the warden that the facility was without a watch commander. He left a note apparently expecting the employer to contact him and find out his concern, rather than making a direct attempt himself to approach the warden directly. His conduct jeopardized the facility and the safety of staff and inmates, the safety of whom is a primary responsibility of the employer. The claimant is guilty of conduct not in the best interests of the employer and he is disqualified.

DECISION:

The representative's decision of June 24, 2005, reference 02, is affirmed. James Cunningham is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount provided he is otherwise eligible.

bgh/kjw