

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GARY L NOLAN
Claimant

APPEAL NO. 08A-UI-10649-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

COUNTY OF SCOTT
Employer

OC: 10/05/08 R: 04
Claimant: Respondent (2-R)

Section 96.5-2-a – Discharge
Section 96.3-7 – Overpayment of Benefits

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated November 6, 2008, reference 01, that concluded the claimant was forced to resign after being given a choice to resign or be discharged. A telephone hearing was held on December 9, 2008. The parties were properly notified about the hearing. The claimant participated in the hearing. Mike Brown participated in the hearing on behalf of the employer with witnesses, Barb McCollom and Jerry Brundies.

ISSUES:

Was the claimant discharged for work-connected misconduct?
Was the claimant overpaid unemployment insurance benefits?

FINDINGS OF FACT:

The claimant worked as a correctional officer for the employer from September 4, 2007, to October 9, 2008.

On October 3, 2008, an inmate failed to return to jail from work release. The inmate ended up appearing at the home of the claimant's girlfriend, Heather Shoemaker, unannounced. Shoemaker was also a correctional officer. The inmate appeared to be under the influence of alcohol and perhaps drugs. He insisted that he come into her house to rest and behaved erratically. Shoemaker would not allow him in her house but agreed to drive him wherever he wanted to go to get him away from the house. She drove him different places, and they sat in her car talking for a few hours before she dropped him off at a bus stop. The inmate told Shoemaker that he was going to turn himself in.

This all took place without the claimant's knowledge while the claimant was working on the overnight shift. On October 4, 2008, the claimant spoke to Shoemaker and she confided in him about what had happened. He told her that she needed to contact the sheriff's department but she refused and began crying uncontrollably. She insisted that the claimant promise not to call the department and agreed that she would contact the department on Monday, if the inmate had

not turned himself in by that time. The claimant did as he promised and did not contact anyone in law enforcement about the inmate.

The inmate turned himself in on Sunday, October 5. Consequently, when Shoemaker reported to work on October 6 she did not report what had happened to anyone. Later, supervisors in the sheriff's office learned about Shoemaker's conduct with the inmate on October 3. They ended up questioning Shoemaker and discovered what had happened and that she had confided in the claimant about her contact with the inmate.

On October 9, 2008, the claimant was interviewed about his involvement with the situation regarding the inmate who had not returned from work release. He admitted that Shoemaker had told him about her contact with the inmate and he had not reported the matter to law enforcement. The employer then discharged the claimant for: (1) conduct unbecoming an officer, (2) neglect of duty, and (3) failing to conform with the law, all in violation of the employer's work rules.

The claimant filed for and received a total of \$2,142.00 in unemployment insurance benefits for the weeks between October 5 and December 6, 2008.

REASONING AND CONCLUSIONS OF LAW:

The Agency awarded benefits based on 871 IAC 24.26(21) and concluded the claimant was forced to quit or be discharged, therefore his quitting was caused by the employer.

871 IAC 24.26(21) provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(21) The claimant was compelled to resign when given the choice of resigning or being discharged. This shall not be considered a voluntary leaving.

The evidence establishes the claimant was discharged, but even if he resigned to avoid a discharge, the outcome would be the same; a termination of employment initiated by the employer for work-conduct issues is considered a discharge for unemployment insurance purposes. 871 IAC 24.1(13).

The question then is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code section 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

The claimant's conduct was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. A correctional officer who has information about an escaped prisoner unquestionably must immediately report this information to law enforcement, whether or not the prisoner said he was going to turn himself in and whether or not the disclosure gets his girlfriend in trouble. The fact that the claimant did not technically violate a criminal statute does not mean he did not commit disqualifying misconduct. Work-connected misconduct as defined by the unemployment insurance law has been established in this case.

The unemployment insurance law requires benefits to be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code section 96.3-7. In this case, the claimant has received benefits but was ineligible for those benefits. The matter of determining the amount of the overpayment and whether the overpayment should be recovered under Iowa Code section 96.3-7-b is remanded to the Agency.

DECISION:

The unemployment insurance decision dated November 6, 2008, reference 01, is reversed. The claimant is disqualified from receiving unemployment insurance benefits until he has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The matter of determining the amount of the overpayment and whether the overpayment should be recovered under Iowa Code section 96.3-7-b is remanded to the Agency.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs