

BEFORE THE
EMPLOYMENT APPEAL BOARD
Lucas State Office Building
Fourth floor
Des Moines, Iowa 50319

DOUGLAS J DETRICK

Claimant,

and

5TH JUDICIAL DISTRICT

Employer.

:
:
:
:
:
:
:
:
:

HEARING NUMBER: 09B-UI-04933

EMPLOYMENT APPEAL BOARD
DECISION

NOTICE

THIS DECISION BECOMES FINAL unless (1) a **request for a REHEARING** is filed with the Employment Appeal Board within **20 days** of the date of the Board's decision or, (2) a **PETITION TO DISTRICT COURT IS FILED WITHIN 30 days** of the date of the Board's decision.

A **REHEARING REQUEST** shall state the specific grounds and relief sought. If the rehearing request is denied, a petition may be filed in **DISTRICT COURT** within **30 days** of the date of the denial.

SECTION: 871 IAC 26.8(5)

DECISION

UNEMPLOYMENT BENEFITS ARE ALLOWED IF OTHERWISE ELIGIBLE

The claimant appealed this case to the Employment Appeal Board. The members of the Employment Appeal Board reviewed the entire record. A majority of the Appeal Board, one member dissenting, finds it cannot affirm the administrative law judge's decision. The Employment Appeal Board **REVERSES** as set forth below.

FINDINGS OF FACT:

The claimant, Douglas J. Detrick, worked for Dept. of Correctional Services as a full-time residential officer from December 14, 2007 through February 18, 2009 at the Fort Des Moines residential facility. (Fact-finding Interview notes) At the start of hire, the employer provided him with a personnel handbook containing the employer's various work rules as well as their policy regarding use of force. In that policy, the employer specifies "... before physical force is used... consider withdrawing from the situation..."

In addition, the employer has an unwritten policy, which provides that no employee shall pursue a resident for any matter. The employer credited the claimant with having received training with regard

to these policies. The claimant never signed a document in acknowledgement of receipt of any written policy.

On January 30, 2009, an offender 'took off out the door' at which time Mr. Detrick pursued him. When the claimant caught up with the offender, Mr. Detrick tackled him to the ground to stop him. (Fact-finding Interview notes) The offender wasn't actually a resident in the facility at the time, but was a 'day reporter.'

The claimant had never been told he couldn't pursue offenders in the event someone ran off the premises. The employer suspended Mr. Detrick on February 4, 2009 pending further investigation. The following day, however, he was scheduled to return to work. Two weeks later, the employer terminated the claimant on February 18, 2009.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code Section 96.5(2)(a) (2009) provides:

Discharge for Misconduct. If the department finds the individual has been discharged for misconduct in connection with the individual's employment:

The individual shall be disqualified for benefits until the individual has worked in and been paid wages for the insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

The Division of Job Service defines misconduct at 871 IAC 24.32(1)(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 the 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 Iowa Supreme court has accepted this definition as reflecting the intent of the legislature. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665, (Iowa 2000) (quoting Reigelsberger v. Employment Appeal Board, 500 N.W.2d 64, 66 (Iowa 1993)).

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6

(Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to

misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 NW2d 661 (Iowa 2000).

The record establishes that the claimant pursued an offender on the work premises only to catch up, tackle and stop the individual. The claimant admitted to the act and was immediately suspended for violating company policy. Mr. Detrick was essentially reinstated for work. The employer continued to the investigation, however, there is no evidence that the employer was put on notice that his job was in jeopardy pending the outcome of that investigation.

Mr. Detrick denied having knowledge of the 'do not pursue' policy. We find his lack of knowledge credible in light of the employer's admission that the 'do not pursue' policy was *not* included in the personnel handbook; rather, it was an unwritten practice that the employer generally followed. Although Mr. Detrick was unavailable at the hearing, we note that the record is void of any other infraction, i.e., policy violation, such that would put him on notice that his job was in jeopardy. While we don't condone such aggressive tactics, it is plausible that his reaction was done in good faith on behalf of the employer's interests. Perhaps, if this 'do not pursue' policy were included in the personnel handbook, the claimant would have had notice and would have thought twice prior to reacting in such a way. At worst, we consider his behavior to be an isolated instance of poor judgment that did not rise to the legal definition of misconduct.

In addition, we find it interesting that considering the employer believed his behavior to be so egregious, the employer allowed him to continue working for two weeks after the 'assaultive' incident. The employer had full knowledge of the incident as it occurred, yet took two weeks to investigate before ultimately severing the employment relationship. Iowa law requires an act upon which a termination is based must be current. See, 871 IAC 24.32(8) The court in Greene v. Employment Appeal Board, 426 N.W.2d 659 (Iowa App. 1988) held that in order to determine whether conduct prompting the discharged constituted a "current act," the date on which the conduct came to the employer's attention and the date on which the employer notified the claimant that said conduct subjected the claimant to possible termination must be considered to determine if the termination is disqualifying. Any delay in timing from the final act to the actual termination must have a reasonable basis. The employer provided no evidence that Mr. Detrick had knowledge that his job was in jeopardy pending the investigation. For this reason, we conclude that the act was not current for unemployment insurance purposes.

DECISION:

The administrative law judge's decision dated April 24, 2009 is **REVERSED**. The claimant was discharged for no disqualifying reason. Accordingly, he is allowed benefits provided he is otherwise eligible.

John A. Peno

AMG/fnv

Elizabeth L. Seiser

DISSENTING OPINION OF MONIQUE F. KUESTER:

I respectfully dissent from the majority decision of the Employment Appeal Board; I would affirm the decision of the administrative law judge in its entirety.

Monique F. Kuester

AMG/fnv