

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LEE HOEUN
Claimant

APPEAL NO. 11A-UI-04840-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MRS CLARK'S FOODS
Employer

**OC: 02/20/11
Claimant: Appellant (1)**

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Lee Hoeun, filed an appeal from a decision dated April 4, 2011, reference 02. The decision disqualified him from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on May 25, 2011. The claimant participated on his own behalf. The employer, Mrs. Clark's Foods (Clark's), participated by Human Resources Director Angie Daniels. Exhibits One and Two were admitted into the record.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Lee Hoeun was employed by Clark's from October 26, 1998 until March 14, 2011 as a full-time sanitation worker. He received training from the Iowa Department of Corrections (IDOC) and from Mrs. Clark's Human Resources Director Angie Daniels in September 2010 about the rules and regulations governing employee conduct with prison labor. Employees are to have no interaction with prisoners at all except as it relates to their work duties. No personal information is to be given or requested by employees. No physical contact is allowed and nothing physical is to be given or received. Violators of the policy are subject to discharge.

On January 14, 2011, Ms. Daniels received a report of possible inappropriate interaction between Mr. Hoeun and an inmate, Kimberly Lynch. The matter was referred to IDOC for investigation. On February 16, 2011, IDOC informed Ms. Daniels the report was most likely going to be founded and at that time Mr. Hoeun was suspended pending the official report. He was on unpaid status but was told he would be given back pay if the report was unfounded. The employer received the IDOC report on the investigation on March 14, 2011.

The report substantiated the allegations through interviews with inmates, employees of Mrs. Clark's, investigation into Ms. Lynch's phone records and personal possessions that relations existed between her and the claimant. She was in possession of a key chain

belonging to him and had used his cell phone. They were seen in the workplace embracing and being alone together in a storage room, and seen face-to-face at the same table in the break room. Calls were made to the claimant and the relationship was facilitated by Ms. Lynch's mother. Cards and letters from the claimant were found in the prisoner's possession.

Ms. Lynch wrote a letter to one of the investigators admitting to a personal relationship with Mr. Hoeun but claiming it was consensual. However, the policies explained to the employees of Mrs. Clark's included the PREA statute (Prisoner Rape Enforcement Act) which means that a prisoner in an outside workplace does not have the ability to legally consent to a personal relationship given the relative power difference between the prisoner and the employee.

The claimant was notified in a letter dated March 14, 2011, he was discharged for violation of the IDOC and company rules regarding employee/prisoner interaction.

REASONING AND CONCLUSIONS OF LAW:

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 claimant denied any and all allegations contained in the letter from IDOC as well as the letter from Ms. Lynch. He maintained that all the employees and prisoners interviewed in the investigation had conspired together to fabricate the accusation. He could not say why or what motive these people would have had to do this or why the IDOC would fabricate an official state document.

The administrative law judge does not find the claimant's denial to be credible. Lee Hoeun violated the employer's policies, the rules of IDOC and state law by engaging in a personal relationship with a prisoner assigned to work at Mrs. Clark's. He had received specific training on the policies which he chose to ignore. This is a violation of the duties and responsibilities the employer has the right to expect of an employee and conduct not in the best interests of the employer. The claimant is disqualified.

DECISION:

The representative's decision of April 4, 2011, reference 02, is affirmed. Lee Hoeun is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount, provided he is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/css