

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DENNIS J HOTKA
Claimant

APPEAL NO. 08A-UI-02020-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

THE UNIVERSITY OF IOWA
Employer

OC: 01/27/08 R: 03
Claimant: Appellant (1)

Iowa Code § 96.5(2)b & c – Discharge/Gross Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the February 20, 2008, reference 01, decision that denied benefits and deleted wage credits based upon a finding of gross misconduct. After due notice was issued, a telephone conference hearing was held on March 13, 2008. Claimant participated with Jan Mitchell-Hotka. Employer participated through Nancy Kroeze and Suzanne Hilleman.

ISSUE:

The issue is whether claimant was discharged for reasons related to job gross misconduct sufficient to warrant a denial of unemployment benefits and deletion of wage credits prior to the separation.

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant was employed as a full from July 1985 through January 24, 2008. He was most recently employed as a groundskeeper since January 1992 until he was discharged after a January 23, 2008 entry of a guilty plea to third degree theft of university property.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related gross misconduct.

Iowa Code § 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.

Iowa Code § 96.5-2-b-c 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:

b. Provided further, If gross misconduct is established, the department shall cancel the individual's wage credits earned, prior to the date of discharge, from all employers.

c. Gross misconduct is deemed to have occurred after a claimant loses employment as a result of an act constituting an indictable offense in connection with the claimant's employment, provided the claimant is duly convicted thereof or has signed a statement admitting the commission of such an act. Determinations regarding a benefit claim may be redetermined within five years from the effective date of the claim. Any benefits paid to a claimant prior to a determination that the claimant has lost employment as a result of such act shall not be considered to have been accepted by the claimant in good faith.

An indictable offense is a crime prosecuted by indictment or information. In Iowa, indictable offenses include serious misdemeanors, aggravated misdemeanors, and felonies, all of which are punishable by a fine of more than \$500 and more than 30 days in jail. <http://www.judicial.state.ia.us/wfdata/frame2240-1450/#l>

Iowa Code § 714.2 provides:

1. The theft of property exceeding ten thousand dollars in value, or the theft of property from the person of another, or from a building which has been destroyed or left unoccupied because of physical disaster, riot, bombing, or the proximity of battle, or the

theft of property which has been removed from a building because of a physical disaster, riot, bombing, or the proximity of battle, is theft in the first degree. Theft in the first degree is a class "C" felony.

2. The theft of property exceeding one thousand dollars but not exceeding ten thousand dollars in value or theft of a motor vehicle as defined in chapter 321 not exceeding ten thousand dollars in value, is theft in the second degree. Theft in the second degree is a class "D" felony. However, for purposes of this subsection, "*motor vehicle*" does not include a motorized bicycle as defined in section 321.1, subsection 40, paragraph "b".

3. *The theft of property exceeding five hundred dollars but not exceeding one thousand dollars in value, or the theft of any property not exceeding five hundred dollars in value by one who has before been twice convicted of theft, is theft in the third degree. Theft in the third degree is an aggravated misdemeanor.* (emphasis supplied)

4. The theft of property exceeding one hundred dollars in value but not exceeding five hundred dollars in value is theft in the fourth degree. Theft in the fourth degree is a serious misdemeanor.

5. The theft of property not exceeding one hundred dollars in value is theft in the fifth degree. Theft in the fifth degree is a simple misdemeanor.

Claimant's guilty plea to theft in the third degree is evidence of gross misconduct. Benefits are denied and wage credits shall be deleted from all employers prior to the date of discharge on January 24, 2008.

DECISION:

The February 20, 2008, reference 01, decision is affirmed. The claimant was discharged from employment due to job-related gross misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible, and wage credits shall be deleted from all employers prior to the date of discharge on January 24, 2008.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/kjw