

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DEMETRIUS LAMAR

Claimant

APPEAL 21A-UI-05835-DZ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

1ST CLASS SECURITY INC

Employer

OC: 12/13/20

Claimant: Respondent (1)

Iowa Code § 96.5(2)a – Discharge for Misconduct

Iowa Code § 96.5(1) – Voluntary Quit

Iowa Code § 96.3(7) – Recovery of Benefit Overpayment

Iowa Admin. Code r. 871-24.10 – Employer Participation in Fact-Finding Interview

PL 116-136, Sec. 2104 – Federal Pandemic Unemployment Compensation

STATEMENT OF THE CASE:

1st Class Security Inc., the employer/appellant, filed an appeal from the February 16, 2021, (reference 01) unemployment insurance decision that allowed benefits. The parties were properly notified of the hearing. A telephone hearing was held on April 29, 2021. The employer participated through James Carlson. Mr. Lamar did not participate. Official notice was taken of the administrative record. Employer's Exhibits 1 and 2 were admitted into evidence.

ISSUES:

Was Mr. Lamar discharged for disqualifying job-related misconduct?

Was Mr. Lamar overpaid benefits?

If so, should he repay the benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Lamar began working for the employer on May 28, 2020. He worked as a full-time loss prevention officer. The employer terminated Mr. Lamar's employment on July 24, 2020 because his security guard identification (ID) card was revoked by the state of Iowa.

The employer told Mr. Lamar that he was required to have a valid security license to maintain his employment. On July 15, 2020, Mr. Lamar submitted an application for a private security guard ID card to the Iowa Department of Public Safety (DPS). Mr. Lamar and the employer signed the application. At same time, Mr. Lamar was issued a temporary private security guard ID card that automatically expired fourteen calendar days later.

On July 24, 2020, the employer received a letter from Iowa DPS informing the employer that it was unlawful for employer to allow Mr. Lamar to continue working as a loss prevention officer because his security guard identification card application was denied and his temporary ID card

was revoked as of July 20, 2020. The letter also informed the employer that Mr. Lamar had been notified of the same information and that Mr. Lamar has the right to appeal the DPS decision. The letter did not tell the employer why Mr. Lamar's application was denied and his temporary ID card was revoked.

Mr. Lamar told the employer that the DPS decision may have been because of an issue in the state of Washington. The employer told Mr. Lamar he could apply again if he could get the issue in the state of Washington resolved so he could get an Iowa ID card. In the meantime, the employer told Mr. Lamar that his employment was terminated effective immediately on July 24, 2020.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes Mr. Lamar was discharged from employment for no disqualifying reason.

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).

Iowa Admin. Code r. 871-24.32(8) provides:

(8) *Past acts of misconduct.* While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

The purpose of this rule is to ensure that an employer does not save up acts of misconduct and spring them on an employee when an independent desire to terminate arises. For example, an employer may not convert a lay off into a termination for misconduct by relying on past acts. *Milligan v. EAB*, 802 N.W.2d 238 (Table)(Iowa App. June 15, 2011).

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984).

Here, the employer did not terminate Mr. Lamar's employment for any act of misconduct committed during his time employed by the company. The employer terminated Mr. Lamar's employment because DPS denied Mr. Lamar's security guard ID card application and revoked his temporary ID card. The employer is not sure what caused the denial/revocation or when the issue in the state of Washington occurred. The employer has failed to establish a current act of misconduct on the part of Mr. Lamar. Benefits are allowed.

Since Mr. Lamar is eligible for benefits, the issues of repayment and chargeability are moot.

DECISION:

The February 16, 2021, (reference 01) unemployment insurance decision is affirmed. Mr. Lamar was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.



Daniel Zeno
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May 5, 2021
Decision Dated and Mailed

dz/scn