

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

**MICHAEL J LAWRENCE
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DES MOINES IA 50320**

**IOWA DEPARTMENT OF
TRANSPORTATION
c/o TALX UCM SERVICES INC
PO BOX 283
ST LOUIS MO 63166**

**Appeal Number: 06A-UI-00433-S2T
OC: 12/11/05 R: 02
Claimant: Appellant (1)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Michael Lawrence (claimant) appealed a representative's January 9, 2006 decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits because he was discharged from work with Iowa Department of Transportation (employer) for violation of a known company rule. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 21, 2006. The claimant participated personally. The employer was represented by David Williams, Manager of Operations, and participated by Kerry Kirkpatrick, Commander of Investigative Unit, and Michael Benner, Motor Vehicle Enforcement Major with the Uniformed Division. The employer offered three exhibits which were marked for identification as Exhibits One, Two, and Three. Exhibits One, Two, and Three were received into evidence.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was hired on March 15, 1985, as a full-time Motor Vehicle Officer 2 Sergeant. The claimant worked in a weigh station. The claimant signed for receipt of the Department of Transportation Policies and Procedures and the Motor Vehicle Enforcement Policies. These policies prohibit inappropriate contact and harassment in the workplace.

The claimant worked with a female subordinate who was having personal problems. The claimant and the claimant's wife listened to the subordinate's problems. In response to the female subordinate's problems, the claimant began having a sexual relationship with her beginning on or about May 2005. Early in the relationship the subordinate had too much to drink after a golf outing. The claimant gave the subordinate a ride home. The subordinate told the claimant that she mentioned the relationship to a co-worker. The claimant became upset and stopped the car in the rain. He called the co-worker, another of the claimant's subordinates, and told him to keep the relationship quiet. Then the claimant drove the intoxicated female subordinate to a park so that she could perform an oral sex act on him.

At the weigh station when the two were alone, the claimant had the subordinate perform oral sexual acts on him at least once per week. Once, a worker from the United States Department of Agriculture walked into the weigh station while the two were engaged in sexual activity in a closed office. In a two-week period the claimant used his employer's cellular telephone to call the female subordinate approximately 26 times. The claimant appeared at the subordinate's home without prior notice. On one occasion he walked in the house while the subordinate was in the bathtub.

On or about November 16, 2005, the subordinate of the claimant told the employer that the claimant was forcing her to have sexual contact in the workplace. The employer immediately placed the claimant on suspension and investigated the claim. In interviews with the employer on November 17 and 28, 2005, the claimant admitted that the subordinate regularly performed oral sex on him but that the acts were consensual. He admitted telling the male subordinate not to talk about the relationship. In addition, the claimant admitted to performing sexual acts in the workplace approximately ten years earlier with another female subordinate. On December 1, 2005, the employer terminated the claimant.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant was discharged for misconduct. For the following reasons the administrative law judge concludes he was.

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).

The employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). An employer has a right to expect employees to conduct themselves in a certain manner. The employer has a right to expect an employee to refrain from sexual activity in the workplace. The employer has a right to expect that a superior will not engage in sexual activity with a subordinate. The employer has a right to expect that a superior will not ask a subordinate to keep his misconduct quiet. The claimant disregarded the employer's right with such wrongful intent and evil design to be misconduct. The claimant's disregard of the employer's interests is misconduct. As such, he is not eligible to receive unemployment insurance benefits.

DECISION:

The representative's January 9, 2006 decision (reference 01) is affirmed. The claimant is not eligible to receive unemployment insurance benefits, because he was discharged from work for misconduct. Benefits are withheld until he has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible

bas/kjw