

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

JERRY L JOHNSON
402 KELLY AVE
BAXTER IA 50028

NEIGHBORHOOD PATROL INC
3329 – 109TH ST
URBAN DALE IA 50322

Appeal Number: 05A-UI-02378-BT
OC: 02/06/05 R: 02
Claimant: Respondent (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:

Neighborhood Patrol, Inc. (employer) appealed an unemployment insurance decision dated March 7, 2005, reference 01, which held that Jerry Johnson (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 24, 2005. The claimant participated in the hearing. The employer participated through Dick Rogerson, Director of Human Resources, and Eric Willcox, Supervisor.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a full-time security officer from September 5, 2000 through February 6, 2005. He was discharged for violation of the employer's policy, Chapter Six, Item Three, Section Six that provides that an employee will be terminated immediately for unauthorized use of a client's computer, office equipment, and other items. The claimant signed for the policy and did go through training in which the work rules were reviewed. On Sunday, February 6, 2005, the claimant was working in the Equitable Building, in Suite 100, which is the Hartung and Schroeder Law Office.

The claimant called the employer at 11:40 a.m. and reported the employer might receive a complaint from Mr. Schroeder. The employer went to the site and spoke to the claimant and to Mr. Schroeder. Mr. Schroeder reported the claimant used the client's bathroom for 15 minutes and afterwards ate some candy from the container on the counter and retrieved a can of soda from the client's refrigerator. Security officers are to use a different restroom in the basement of the building. The claimant denies taking candy or soda but reports he put his can of soda in the refrigerator after being confronted by the client. The employer's security officers must be above reproach and the claimant's actions had the appearance of impropriety if not more. The claimant was discharged at that time.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a.

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 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 N.W.2d 661, 665 (Iowa 2000).

The claimant was discharged for violating company policy. His actions had the appearance of impropriety and were detrimental to the employer's business. The employer discharged the claimant according to its written policy. While the claimant's conduct may have warranted discharge, it does not necessarily rise to the level of disqualifying misconduct as defined by the unemployment insurance law. Benefits are therefore allowed.

DECISION:

The unemployment insurance decision dated March 7, 2005, reference 01, is affirmed. The claimant was discharged. Misconduct has not been established. Benefits are allowed, provided the claimant is otherwise eligible.

sdb/tjc