

#### FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Jamie R. Daiker-Runles was employed at the Newton Correctional Facility from February 14, 2003 until she was suspended on August 5, 2005 and subsequently discharged on September 12, 2005. She last worked as a correctional officer.

Sometime in July 2005 Newton Correctional Facility received an anonymous letter, apparently from an inmate, which accused Ms. Daiker-Runles of living with a former inmate. The unsigned letter referred to another former inmate named "Marion" who allegedly sold drugs from the claimant's apartment. After some investigation, the employer discovered that a former inmate whose first name is Marion reportedly lived at the same address as Ms. Daiker-Runles. Lieutenant Darren Skeries was assigned to investigate the allegations. He spoke with Sergeant Veasley of the Des Moines Police Department. Sergeant Vesley reported being called to the address in late June or early July and finding the former inmate named Marion and another male. They were not on the lease for the apartment and were told to leave. The two individuals called for someone to pick them up. Ten to fifteen minutes later a female, later identified by Sergeant Veasley as being Ms. Daiker-Runles, appeared with a key and driving a vehicle registered in the name of Ms. Daiker-Runles.

With this information, Newton Correctional Facility discharged Ms. Daiker-Runles on September 5, 2005 for violating institution policies prohibiting contact with ex-inmates, requiring employees to cooperate fully and honestly in internal investigations and requiring employees to notify their supervisor and the personnel office of changes in address or phone number.

#### REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that the claimant was discharged for misconduct in connection with her employment. It does.

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).

Ms. Daiker-Runles denied in the investigation that she was the person at the apartment on the night of Sergeant Veasley's visit. She repeated that denial under oath in the hearing. She testified that at the time she was visiting her children in Mitchellville. She provided no additional witnesses and no documentation corroborating her alibi. The heart of the employer's evidence is a set of transcripts of Lieutenant Skeries' interviews of Sergeant Veasley. While Sergeant Veasley was not called to testify, the evidence submitted by the employer is detailed, plausible and internally consistent.

The claimant argued that she felt the institution was trying to get rid of her because of an earlier complaint of sexual harassment which she had filed. Nevertheless, she submitted as Exhibit C her most recent performance plan and evaluation completed by her supervisor, an evaluation which concluded that she met the institution's expectations. The evaluation is inconsistent with the claimant's assertion that the discharge was retaliation for her prior complaint. Claimant's Exhibit C is admitted into the record because it helps the administrative law judge determine credibility. The administrative law judge finds additional inconsistency in the claimant's statements during the investigation and during the hearing. It appears from the Employer's documentation that Ms. Daiker-Runles asserted that a certain Tonia Smith had been the person Sergeant Veasley spoke to at the time of the incident. She denied this assertion at the time of the hearing. Ms. Daiker-Runles also asserted that she had sublet the apartment informally to a certain Christopher Lee Zumalt. Her only evidence of this was a copy of correspondence mailed to Mr. Zumalt at the address in question by Blockbuster. He was not called to testify at the hearing. The claimant also asserted that her former landlord initiated the investigation out of spite since Ms. Daiker-Runles had filed for bankruptcy and listed the landlord as one of her creditors.

The administrative law judge does not find the claimant to be a credible witness. Her assertions of wrongdoing by others and her absence of evidence to corroborate her alibi do not offset the employer's evidence. Misconduct has been established. Benefits are withheld.

#### DECISION:

The unemployment insurance decision dated September 28, 2005, reference 01, is affirmed. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

kkf/kjw