

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**STEVEN C GRAY**  
Claimant

**PER MAR SECURITY & RESEARCH CORP**  
Employer

**APPEAL 19A-UI-09675-JC-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 02/10/19  
Claimant: Respondent (1)**

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Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment  
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

**STATEMENT OF THE CASE:**

The employer/appellant, Per Mar Security and Research Corporation, filed an appeal from the November 26, 2019 (reference 03) Iowa Workforce Development (“IWD”) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on January 7, 2020. The claimant participated personally. Cindy Gray, wife of claimant and employee of Per Mar Security Research Corporation, also testified. The employer participated through Michael Lovell, operations manager.

The administrative law judge took official notice of the administrative records including the fact-finding documents. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUES:**

Was the claimant discharged for disqualifying job-related misconduct?  
Has the claimant been overpaid any unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?  
Can any charges to the employer’s account be waived?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed part-time as a security guard beginning April 23, 2019 and was separated from employment on October 23, 2019, when he was discharged.

When the claimant was hired, he was required to undergo a background check, which checked his criminal history for a period of seven years. He passed and was allowed to begin employment. He was also required to obtain approval by way of a “guard card” which was regulated by the Department of Public Safety (DPS).

At no time did the claimant conceal or hide any information related to his history, which included a conviction for domestic assault in the 1980s or 1990s. He did disclose the arrest at hire but

was informed by the employer that it was so far back that it would not impact his ability to obtain his guard card (Cindy Gray testimony).

When the claimant did not receive his guard card, he contacted both the employer and DPS. Unbeknownst to the claimant or the local office for which the claimant worked, DPS had mailed a letter to the employer's corporate office in May 2019, stating that the claimant was ineligible for a guard card due to his prior conviction. When the claimant reapplied for his guard card, DPS denied the request. Because he could not obtain the required approval from DPS, he was discharged by the employer after working on the job in the capacity of security officer for almost six months.

The administrative record reflects that claimant has received unemployment benefits in the amount of \$1,648.00, since separation. The administrative record also establishes that the employer did participate in the fact-finding interview or make a witness with direct knowledge available for rebuttal. Michael Lovell attended.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was discharged for no disqualifying reason. Benefits are allowed.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5(2)a. The rules define misconduct as deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. Iowa Admin. Code r. 871-24.32(1).

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *Casper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). Whether the discharge was warranted 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. Emp't Appeal Bd.*, 616 N.W.2d 661, 665 (Iowa 2000).

Iowa Admin. Code r. 871-24.32(4) provides:

(4) Report required. The claimant's statement and employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

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 claimant's ability to perform his job was regulated by Iowa Code and approval through the Iowa Department of Public Safety. In this case, the claimant at the time of hire, was required to complete a background check. There is no evidence to support the claimant concealed any information during his employment or at the time of application to allow him to clear a background check and work for the employer when he should not have been eligible. Rather, the claimant performed work for a period of six months until the claimant inquired to why he had not yet obtained his required guard card. The employer was aware of the arrest at hire and it was not until six months later when DPS informed the employer the claimant was no longer eligible to work that he was discharged. The administrative law judge recognizes the employer must comply with the DPS directive if informed an employee is not eligible to work in their facility. However, the evidence presented does not support the claimant was discharged for a final or current act of job-related misconduct. In addition, it cannot be ignored that the employer was mailed a letter in May 2019 from DPS stating the claimant was ineligible and the claimant continued to work another five months.

The question before the administrative law judge in this case is not whether the employer has the right to discharge this employee, but whether the claimant's discharge is disqualifying under the provisions of the Iowa Employment Security Law. While the decision to terminate the claimant may have been a sound decision from a management viewpoint, for the above stated reasons, the administrative law judge concludes that the employer has not sustained its burden of proof in establishing that the claimant's discharge was due to a final or current act of job related misconduct. Accordingly, benefits are allowed, provided the claimant is otherwise eligible.

Because the claimant is eligible for benefits, the issues of overpayment and relief of charges are moot.

**DECISION:**

The unemployment insurance decision dated November 26, 2019, (reference 03) is affirmed. The claimant was discharged for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible.

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Jennifer L. Beckman  
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Decision Dated and Mailed

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