

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

ROBERT A POPE
Claimant

APPEAL NO. 13A-UI-12102-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CITY OF STRAWBERRY POINT
Employer

OC: 09/22/13
Claimant: Respondent (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

City of Strawberry Point (employer) appealed a representative's October 15, 2013, decision (reference 01) that concluded Robert Pope (claimant) was discharged and there was no evidence of willful or deliberate misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for December 3, 2013. The claimant was represented by Chad Cox, Attorney at Law, and participated personally. Lisa Pope, the claimant's wife, observed the hearing. The employer was represented by Tim Schloss, Attorney at Law, and participated by Dale Fox, Mayor.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

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 hired in October 2002, as a full-time chief of police. The claimant signed for receipt of the employer's handbook. The employer did not issue the claimant any written warnings during his employment.

The claimant used his personal van from time to time as an undercover vehicle and for other work-related jobs. In February 2009, he asked the City Administrator if he would be allowed to purchase tires with his own money under the State of Iowa bid plan. The City Administrator was the person the claimant sought person from on some financial matters. The City Administrator gave the claimant permission. The claimant gave the City Administrator \$249.82 in cash and the City Administrator prepared a money order to the tire company for the tires. The claimant paid to have the tires installed on his van. The claimant did not hide his actions.

On approximately August 24, 2013, the mayor learned of the situation and the county sheriff told the mayor this practice was not allowed. The city council terminated the claimant on September 24, 2013.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

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.

871 IAC 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 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). The employer must establish not only misconduct but that there was a final incident of misconduct which precipitated the discharge. The last incident provided by the employer occurred in April 2009 and was discovered on approximately August 24, 2013. The claimant did not hide his actions. The incident was known previously to August 24, 2013. The claimant was not discharged until September 24, 2013. The incident and the termination are too remote. The employer has failed to provide any evidence of willful and deliberate misconduct which was the final incident leading to the discharge and disqualification may not be imposed.

DECISION:

The representative's October 15, 2013, decision (reference 01) is affirmed. The employer has not met its proof to establish job-related misconduct. Benefits are allowed.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/css