

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ROBERT W MARTIN**  
Claimant

**APPEAL NO. 11A-UI-08268-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**FT DODGE CORRECTIONAL FACILITY**  
Employer

**OC: 05/22/11  
Claimant: Appellant (1)**

Section 96.5(2)a – Discharge

**STATEMENT OF THE CASE:**

The claimant, Robert Martin, filed an appeal from a decision dated June 14, 2011, reference 01. The decision disqualified him from receiving unemployment benefits. After due notice was issued a hearing was held by telephone conference call on July 18, 2011. The claimant participated on his own behalf and with Chad Carr. The employer, Fort Dodge Correctional Facility (FDCF), participated by Warden James McKinney.

**ISSUE:**

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

**FINDINGS OF FACT:**

Robert Martin was employed by FDCF from October 13, 2000 until May 13, 2011 as a full-time correctional officer. He had prior disciplinary action in 2008 when he was charged with shop-lifting from a local grocery store. He was suspended for ten days, reduced to five days.

On March 1, 2011, an inmate complained Mr. Martin had stolen a bottle of Febreze from a box of items which had been ordered by the inmates. The material inside was to be distributed to the inmates but the claimant took out the bottle of deodorizer and said something to the effect that “this is one fucking bottle they aren’t going to get.” He then took it to the staff bathroom.

The complaint was investigated by Netty Renshaw who watched the video surveillance of the incident and reported to Warden James McKinney the claimant had taken the bottle out of the box and took it away. On March 3, 2011, Mr. Martin was given written notice he was going to be investigated for this and other incidents and was suspended with pay beginning March 9, 2011.

The investigation consisted of watching video footage of his shifts and comparing the activity on the video with the log book entries made by the claimant. It revealed that a substantial number of cell searches and area searches he documented as having performed were not, in fact, done.

On more than one occasion he was seen sitting at the desk when his log book entries indicated he was out doing an area search.

During this investigation two other employees complained Mr. Martin had taken their official employee identification photos, altered them in unflattering ways, and stored them on his work computer. He continued to do this even after being asked by the employees to remove them.

The employer had a hearing regarding the results of the investigation at the end of April 2011, at which the claimant was present with union representation. He admitted at that hearing he had falsified the log book reports and had altered the pictures of his co-workers. His explanation was that he was suffering from depression, the same explanation he had used two years earlier when he was charged in the shop lifting incident. He stated he was going to be seeking medical help for the condition. Although a medical professional agreed he was qualified for FML, there has been no assessment that he was mentally incompetent and did not know what he was doing when he was falsifying the records.

His explanation to creating the mocking photos of his co-workers is that these two individuals had continued to mention to him and others about the shop lifting incident. He decided to mock them in revenge rather than reporting them to management.

After the hearing Mr. McKinney met with other members of management and decided discharge was the correct next step. Before this step was taken the warden consulted with the department of corrections director and the legal counsel. The decision was confirmed and Mr. Martin was notified of the discharge in person on May 13, 2011.

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

Iowa Code § 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.

The claimant was discharged for falsification of official records, theft and inconsiderate treatment of his co-workers. His explanation that he was mentally incompetent and did not know he was falsifying records is not convincing. One or two occasions might be considered an oversight but not the large number of deliberate falsifications discovered by the employer. If he was so incompetent, for any reason, it would be unlikely he would be able to perform any other routine tasks such as drive to work, pay his bills and buy groceries, but he asserted he had no trouble performing those types of routine tasks.

His assertion he did not know the Febreze belonged to an inmate has not been supported by competent evidence. In fact, a report from another correctional officer confirms Mr. Martin was told the material belonged to an inmate and he took it anyway, stating that it was one bottle the inmate was no going to get.

His explanation as to why he made the mocking photos of his co-workers is also not convincing. The appropriate way to handle any complaints about these people reminding him and others of the shop lifting incident was to complain to management. Nothing could be accomplished by joining in to create a difficult work environment even more so.

The record establishes the claimant was discharged for violations of known company rules. The employer has the obligation to provide a safe and harassment-free environment for all employees and inmates. The claimant's conduct interfered with its ability to do so. This is a violation of the duties and responsibilities the employer has the right to expect of an employee and is conduct not in the best interests of the employer. The claimant is disqualified.

**DECISION:**

The representative's decision of June 14, 2011, reference 01, is affirmed. Robert Martin is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount, provided he is otherwise eligible.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

bgh/pjs