

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SUSAN M HEACOCK
Claimant

APPEAL NO. 07A-UI-07030-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DUBUQUE COUNTY
Employer

**OC: 06/03/07 R: 04
Claimant: Respondent (1)**

Iowa Code Section 96.5(2)(a) – Discharge for Misconduct

STATEMENT OF THE CASE:

Dubuque County filed a timely appeal from the July 10, 2007, reference 03, decision that allowed benefits. After due notice was issued, a hearing was commenced on November 26, 2007 and concluded on December 6, 2007. Claimant Susan Heacock participated on November 26, but on December 6 was not available at the number she provided for the hearing and did not participate. Sheriff Ken Runde represented the employer on November 26 and presented additional testimony through Sergeant Mike Muenster, Captain Dan Chapman, Chief Deputy Don Vrotsos, and Personnel Director Mary Ann Specht. On December 6, Captain Dan Chapman represented the employer. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant and received Exhibits One, Two, and Three into evidence.

ISSUE:

Whether the claimant was discharged for misconduct, in connection with the employment, that disqualifies her for unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Susan Heacock was employed by Dubuque County as a full-time Juvenile Correctional Officer from March 18, 2006 until June 7, 2007, when she was suspended pending discharge from the employment. Ms. Heacock's supervisor was Captain Dan Chapman, Jail Administrator.

The final incident that prompted the separation occurred on June 5, 2007, toward the end of Ms. Heacock's shift and at or about the time shift change was to occur. Ms. Heacock had accompanied a juvenile to court for a court appearance. A Deputy had accompanied another juvenile to court for an appearance. While Ms. Heacock was in the courtroom, she turned down the volume on her communication radio. It was standard for law enforcement personnel to either turn the volume of the radio down or wear an ear piece/earphone when in court, to avoid interfering with the proceedings. When the juvenile in Ms. Heacock's custody was finished with court, Ms. Heacock escorted the juvenile to the juvenile detention center in a different area of the building. The Deputy remained in the courtroom with the juvenile in his custody. When

Ms. Heacock left the courtroom, she neglected to turn the volume back up on her communication radio. When Ms. Heacock returned to the juvenile detention center, she turned over custody of the juvenile to two correctional officers in the juvenile detention center's control room. Ms. Heacock then took a person call on her personal cell phone. Ms. Heacock had not yet provided the other correctional officers with information regarding what to do next with the juvenile. The juvenile was to be released from custody. Ms. Heacock had not yet completed the shift-change protocol.

While Ms. Heacock was on the phone, the juvenile still in the courtroom with the Deputy began to act out after learning he would not be released from custody. The Deputy attempted to summon assistance by means of his communications radio. Because Ms. Heacock had neglected to turn the volume of her communications radio back up, neither Ms. Heacock, nor the other two corrections officers present in the control room could hear the Deputy's radio call for assistance. Courthouse security staff attempted to contact the juvenile detention center control room by telephone. However, one of the other corrections officers was on a work-related call in the control room, which prevented the courthouse security staff from getting through. The Deputy needing assistance was eventually able to get assistance from other law enforcement officers present in the courthouse and was able to secure the juvenile in his custody.

On June 6, one or more detention officers and/or Deputies complained to Sergeant Mike Muenster about Ms. Heacock's June 5 conduct. On June 6, Sergeant Muenster summoned Ms. Heacock to a meeting to discuss the June 5 incident. Sergeant Muenster told Ms. Heacock that her conduct had created a major security risk. Sergeant Muenster was unimpressed with Ms. Heacock's attempts to excuse her actions. Ms. Heacock asserted that she had in fact given an appropriate shift report concerning the juvenile in her custody to the two detention officers in the control room. Ms. Heacock asserted she had taken the personal call because her shift was over. This assertion was contradicted by statements provided by those officers. After this meeting, Sergeant Muenster contacted the Deputy Sheriff who had needed assistance on June 5. That Deputy indicated that Ms. Heacock had received two or three personal calls during her shift on June 5.

On June 7, Sergeant Muenster reported the incident to Captain Dan Chapman, Jail Administrator. Captain Chapman requested that Sergeant Muenster provide a written report, which Sergeant Muenster provided on June 7. On June 7, Captain Chapman reported the matter to Sheriff Ken Runde. Sheriff Runde reviewed Sgt. Muenster's report. Sheriff Runde instructed Captain Chapman to notify Ms. Heacock that she was suspended and that the Sheriff intended to commence the discharge procedure. On June 7, Captain Chapman notified Ms. Heacock she would be suspended pending her discharge from the employment.

The employer had a written code of ethics that required Ms. Heacock to respond to calls for assistance from other law enforcement officers. Ms. Heacock signed her acknowledgment receipt of the code of ethics compact diskette (CD) on March 7, 2007. At the end of April or beginning of May 2007, the Sheriff held a staff meeting to address concerns about officers not responding in a timely manner to calls for assistance. During the meeting, the Sheriff had notified the officers that they would face discharge if they failed to provide a timely response to a call for assistance.

The employer established shift-change protocol required Ms. Heacock to notify the incoming detention officers of any pending situations and to turn over the radio equipment to the incoming staff. Ms. Heacock had participated in a nine-week field training program that included the shift-change protocol. The fact that Ms. Heacock still had the radio on her person at the time

she took the personal call was an indication that she had not in fact completed the shift-change protocol prior to taking the personal call.

After Captain Chapman notified Ms. Heacock that the Sheriff had begun the discharge process, Ms. Heacock sought assistance through her union and through the Sheriffs' association. Ms. Heacock secured an agreement with the Sheriff, whereby she would be allowed to resign instead of being discharged.

REASONING AND CONCLUSIONS OF LAW:

The evidence in the record establishes that Ms. Heacock was discharged and did not voluntarily quit the employment. Where a claimant resigned in lieu of being discharged, the quit is not voluntary and the administrative law judge evaluates whether the evidence establishes misconduct that would disqualify the claimant for unemployment insurance benefits. See 871 IAC 24.26(21).

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.

The employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See Lee v. Employment Appeal Board,

616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

While past acts and warnings can be used to determine the magnitude of the current act of misconduct, a discharge for misconduct cannot be based on such past act(s). The termination of employment must be based on a current act. See 871 IAC 24.32(8). In determining whether the conduct that prompted the discharge constituted a "current act," the administrative law judge considers the date on which the conduct came to the attention of the employer and the date on which the employer notified the claimant that the conduct subjected the claimant to possible discharge. See also Greene v. EAB, 426 N.W.2d 659, 662 (Iowa App. 1988).

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. See 871 IAC 24.32(4). When it is in a party's power to produce more direct and satisfactory evidence than is actually produced, it may fairly be inferred that the more direct evidence will expose deficiencies in that party's case. See Crosser v. Iowa Dept. of Public Safety, 240 N.W.2d 682 (Iowa 1976).

The evidence in the record establishes that Ms. Heacock was negligent in the performance of her duties on June 5, 2007. The evidence indicates that Ms. Heacock was negligent in failing to complete the shift-change protocol before taking a personal call. The evidence indicates that Ms. Heacock was negligent in failing to turn up the volume of her communications radio after she exited the courtroom. The evidence indicates that the negligent behavior occurred over the course of a few minutes. The evidence fails to establish any other instances of negligence and/or carelessness. This single incident of negligent behavior, though significant, would not disqualify Ms. Heacock for unemployment insurance benefits. See 871 IAC 24.32(1)(a).

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Ms. Heacock was discharged for no disqualifying reason. Accordingly, Ms. Heacock is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits paid to Ms. Heacock.

DECISION:

The Agency representative's July 10, 2007, reference 03, decision is affirmed. The claimant was discharged for no disqualifying reason. The claimant is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/kjw