

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MICHAEL COX**  
Claimant

**APPEAL NO. 09A-UI-11639-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OTTUMWA COMM SCHOOL DISTRICT**  
Employer

**Original Claim: 02/08/09  
Claimant: Appellant (1)**

Iowa Code § 96.5-2-a - Discharge for Misconduct

**STATEMENT OF THE CASE:**

Michael Cox (claimant) appealed an unemployment insurance decision dated August 12, 2009, reference 04, which held that he was not eligible for unemployment insurance benefits because he was discharged from the Ottumwa Community School District (employer) for work-related misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 27, 2009. The claimant participated in the hearing. The employer participated through Davis Eidahl, Assistant Superintendent. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

The issue is whether the employer discharged the claimant for work-related misconduct.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was hired on a conditional basis as a temporary seasonal worker on July 13, 2009 and was discharged on July 17, 2009 for falsification of his employment application. His offer of employment was based on a positive criminal background check and final approval by the Board. The employer's application for employment asked the claimant whether he had been convicted of a felony or any offense involving moral turpitude. The claimant answered in the negative.

The offer of employment advised the claimant he would be discharged if he had any drug convictions or any conviction involving violence. The employer's background check revealed the claimant had a misdemeanor conviction on August 22, 2002 for assault with intent to inflict serious bodily injury. The claimant also had a misdemeanor trespassing conviction on February 15, 2005.

## REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a.

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 employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The claimant was discharged for providing false information on his employment application. When a person willfully and deliberately makes a false statement on an employment application, such falsification shall be an act of misconduct in connection with the employer. The statement need not be written and an omission of a pertinent fact would have the same effect. The falsification must be such that it does or could result in endangering the health, safety, or morals of the applicant or others, or result in exposing the employer to legal liabilities or penalties, or result in placing the employer in jeopardy. 871 IAC 24.32(6). The Iowa Supreme Court has stated that a misrepresentation on a job application must be materially related to job performance to disqualify a claimant from receiving unemployment insurance benefits. Larson v. Employment Appeal Board, 474 N.W.2d 570, 571 (Iowa 1991). While this statement is *dicta*, since the court ultimately decided Larson was discharged for incompetence not her deceit on her application, the reasoning is persuasive.

The court does not define materiality but cites Independent School Dist. v. Hansen, 412 N.W.2d 320, 323 (Minn. App. 1987), which states a misrepresentation is not material if a truthful answer would not have prevented the person from being hired.

In the case herein, the evidence does establish that the claimant would not have been hired if he had truthfully disclosed his assault conviction. The claimant contends he did not understand what moral turpitude meant on the application but admitted he did not ask anyone about it. Furthermore, the offer of employment specifically advised the claimant he would be discharged if he had any convictions involving violence, and he was fully aware of his assault conviction but failed to disclose that information. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

**DECISION:**

The unemployment insurance decision dated August 12, 2009, reference 04, is affirmed. The claimant is not eligible to receive unemployment insurance benefits, because he was discharged from work for misconduct. Benefits are withheld until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

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Susan D. Ackerman  
Administrative Law Judge

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Decision Dated and Mailed

sda/kjw