

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DAVID S PURVIS**  
Claimant

**APPEAL NO. 09A-UI-08615-VST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**JASPER COUNTY**  
Employer

**OC: 05/10/09**  
**Claimant: Appellant (1)**

Section 96.5-2-A -- Misconduct

**STATEMENT OF THE CASE:**

Claimant filed an appeal from a decision of a representative dated June 11, 2009, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on July 7, 2009. Claimant participated. Employer participated by Brady Lewis, Jasper County Sheriff's Detective; Dennis Simon, Director of Human Resources; and Doug McClun, Jasper County Maintenance Director. The record consists of the testimony of Dennis Simon; Doug McClun; Brady Lewis; and David Purvis.

**ISSUE:**

Whether the claimant was discharged for misconduct.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The claimant worked as a maintenance technician for Jasper County. The county utilizes inmate labor from the Newton Correctional Facility and one of these inmates was assigned to the maintenance department. The prison system has strict rules regarding the use of inmate labor and those rules have been adopted by Jasper County. The claimant, along with other county employees, was made aware of those rules and given specific training by the county and prison officials on numerous occasions. On February 26, 2009, the claimant attended training where policies concerning tobacco use by inmate labor were specifically discussed. Inmates were not allowed to smoke on work sites and were not to be provided tobacco by county employees.

The claimant violated the tobacco policies on several occasions by smoking with the inmate; providing tobacco products to the inmate; and taking money from the inmate both to purchase tobacco and to keep for himself. The claimant admitted these violations first to Sheriff's Detective Brady Lewis and then to Dennis Simon and Doug McClun. Detective Brady was conducting a criminal investigation and prior to questioning the claimant had explained to the

claimant his Miranda rights and the claimant signed a waiver of those rights. The criminal investigation is still pending with the county attorney. Mr. Simon and Mr. McClun conducted an employment investigation starting May 12, 2009, and talked with the claimant. The claimant declined union representation twice on May 12, 2009. He was then terminated on May 13, 2009.

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

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.

Misconduct is found in deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. In this case the evidence established that the claimant deliberately and knowingly violated his employer's policy when he repeatedly provided tobacco products to an inmate. The claimant had received training from his employer on how to work with inmate labor and specifically on tobacco use by inmates. The claimant knew he could not smoke with inmates on the job site and that he could not give tobacco products to an inmate or take money to purchase those products.

The claimant testified that he did not smoke with the inmate or take money or buy tobacco products but he had previously admitted to those violations both when interviewed by the sheriff's office as part of a criminal investigation and by human resources as part of the employment investigation. That testimony is not credible. The claimant was given a Miranda warning by the detective and was advised of his right to union representation during the

employment investigation. He knew that both investigations were serious matters. He could not offer any explanation on why he would admit, on two separate occasions in front of three separate individuals, to something that he did not do.

The claimant's deliberate violations of the employer's policy on multiple occasions amount to more than an isolated instance of poor judgment. The employer had an interest in insuring that policies regarding inmate labor were adhered to by its employees and the claimant's failure to do so on a repeated basis was a material breach of the claimant's duty to his employer. Benefits are denied.

**DECISION:**

The decision of the representative dated June 11, 2009, reference 01, is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

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Vicki L. Seeck  
Administrative Law Judge

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Decision Dated and Mailed

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