

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHRISTOPHER N MELLECKER
Claimant

APPEAL NO. 10A-UI-08857-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

THE UNIVERSITY OF IOWA
Employer

OC: 05/23/10
Claimant: Respondent (2-R)

Section 96.5-2-a – Discharge
Section 96.3-7 – Overpayment of Benefits

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated June 17, 2010, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on August 6, 2010. The parties were properly notified about the hearing. The claimant participated in the hearing. Mary Eggenburg participated in the hearing on behalf of the employer with witnesses Ian Scott and Lucy Wiederholt.

ISSUES:

Was the claimant discharged for work-connected misconduct?

Was the claimant overpaid unemployment insurance benefits?

FINDINGS OF FACT:

The claimant worked as a public safety patrol officer for the employer from August 27, 2007, to April 28, 2010. In January 10, 2010, the employer instituted a pursuit policy, which contains a risk matrix to provide guidelines for officers to use in determining whether to get involved in a vehicle dispute. The policy was reviewed with officers, including the claimant, in March 2010. The claimant was also informed and understood that under the employer's work policies, employees of the department of public safety were prohibited from criticizing the department, its policies, or members by talking, writing, or expression if such expression is defamatory, obscene, unlawful, or tends to impair the operation of the department or undermines its reputation.

On April 27, 2010, the claimant joined a high-speed pursuit with officers from the Coralville Police Department after the vehicles entered the university's campus. The high-speed pursuit was rated as a high-risk pursuit under the risk matrix policy, which would have dictated that the claimant not get involved in the dispute. When the claimant's supervisor instructed him to discontinue the pursuit, the claimant followed the instruction and stopped his vehicle.

The claimant has a Facebook page and other officers and supervisors have access to what he posts on the page because he has approved them as Facebook friends, along with any other Facebook friends he might have. In the early morning hours on April 28, the claimant posted a Facebook page stating that he wished law enforcement “up here” was like in the South where they only care about getting the suspect in custody and do what is necessary to complete the task. He stated that “up here” law enforcement “not at the officer rank” only care about the possibility of getting sued for doing their job. He ended the post with “weak, fucking weak, grow a pair.” The post was laced with profanity. The post expressed criticism of his superiors requiring him to discontinue the pursuit the day before.

A supervisor read what the claimant had posted on his Facebook page and reported it to management. The claimant was initially suspended on April 29, 2010, and then was discharged on May 18, 2010, for violating the employer’s pursuit and criticism of the department policies.

The claimant filed for and received a total of \$4,862.00 in unemployment insurance benefits for the weeks between May 23 and August 21, 2010.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent, or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing the credibility of the witnesses and the reliability of the evidence and by applying the proper standard and burden of proof. I do not find the claimant’s testimony that his Facebook posting had nothing to do with him being called off the pursuit the day before. He willfully violated the employer’s policy by expressing criticism of his superiors and the pursuit policy and joining a pursuit that he must have known he was required to avoid under the policy.

The unemployment insurance law requires benefits to be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. But the overpayment will not be recovered when an initial determination to award benefits is reversed on appeal on an issue regarding the claimant’s employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code § 96.3-7. In this case, the claimant has received benefits but was ineligible for those benefits. The matter of deciding the amount of the overpayment and whether the overpayment should be recovered under Iowa Code § 96.3-7-b is remanded to the Agency.

DECISION:

The unemployment insurance decision dated June 17, 2010, reference 01, is reversed. The claimant is disqualified from receiving unemployment insurance benefits until he has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The matter of deciding the amount of the overpayment and whether the overpayment should be recovered under Iowa Code § 96.3-7-b is remanded to the Agency.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/kjw