

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

BEN D HARRISON
Claimant

IA DEPT OF CORRECTIONS/OAKDALE
Employer

APPEAL 20A-UI-00172-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 12/08/19
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

Ben Harrison (claimant) appealed a representative's December 31, 2019, decision (reference 03) that concluded he was not eligible to receive unemployment insurance benefits after his separation from work with Iowa Department of Corrections/Oakdale (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on January 27, 2020. The claimant participated personally. The employer was represented by Lisa Harroff, Hearings Represented, and participated by Derek Rickels, Correctional Supervisor. The employer offered and Exhibit One was received into evidence.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on September 3, 2019, as a full-time correctional officer. He signed for receipt of the employer's policies on September 3, 2019. The policies state, "4. Obey all applicable federal, state, and local laws and the policies of the IDOC, institutions, or judicial districts. 5. Inform their supervisor immediately if under investigation, arrested, charged, convicted, or required to appear in court for any criminal offense including moving violations and/or administrative actions that result in loss of driving privileges or weapons permit. A written report shall be provided to the Warden, Judicial District Director (depending on your work location), or the Director of Corrections within 24 hours of occurrence." The employer did not issue the claimant any warnings.

In October 2019, an insurance investigator contacted the claimant asking questions about an injury incurred during previous employment. The claimant's daughter was in the hospital and he asked the investigator to contact his attorney. In late October or early November 2019, the claimant sent an e-mail to Captain Hill asking to meet in person. The claimant did not identify the subject matter but wanted to report the investigator's call. Captain Hill did not respond to either of the claimant's emails.

On approximately October 5, 2019, the employer heard that Scott County was investigating the claimant for an unknown reason. The claimant was unaware of any investigation. On December 3, 2019, Captain Hill told the supervisor to terminate the claimant for the unknown investigation. The supervisor did not see any documents from Scott County relating to the investigation. On December 5, 2019, the supervisor terminated the claimant for "not successfully completing his probationary period". The claimant has not been investigated, charged, or convicted of any crime in Scott County.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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.

Iowa Admin. Code r. 871-24.32(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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

Iowa Admin. Code r. 871-24.32(4) provides:

(4) Report required. The claimant's statement and employer's statement must give detailed facts as to the specific reason for the claimant's discharge. 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. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

Iowa Admin. Code r.871-24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984).

The employer must establish not only misconduct but that there was a final incident of misconduct which precipitated the discharge. The last incident was first discovered by the employer on October 5, 2019. The claimant was not discharged until December 5, 2019. In addition, the employer did not provide any evidence of job-related misconduct. The employer has failed to provide any evidence of willful and deliberate misconduct which was the final incident leading to the discharge and disqualification may not be imposed.

DECISION:

The representative's December 31, 2019, decision (reference 03) is reversed. The claimant was discharged. Misconduct has not been established. Benefits are allowed provided the claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/rvs