

**IOWA DEPARTMENT OF INSPECTIONS AND APPEALS
ADMINISTRATIVE HEARINGS DIVISION, UI APPEALS BUREAU**

NICHOLAS A BLOCKER
Claimant

CITY OF MARION
Employer

APPEAL 22A-UI-08666-DH-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/13/22
Claimant: Respondent (2)

Iowa Code § 96.5(1) - Voluntary Quit
Iowa Code § 96.5(2)a - Discharge for Misconduct
Iowa Code § 96.3(7) - Recovery of Benefit Overpayment
Iowa Admin. Code r. 871-24.10 - Employer/Representative Participation Fact-finding Interview
Iowa Admin. Code r. 871-24.32(1)a - Discharge for Misconduct
Iowa Admin. Code r. 871-24.1(113)c - Discharge for Violation of Rules

STATEMENT OF THE CASE:

The employer/appellant, City of Marion, appealed the March 30, 2022, (reference 01) unemployment insurance decision that allowed benefits based upon finding the record for the 03/30/22, dismissal from work showed no misconduct. Notices of hearing were mailed to the parties' last known addresses of record for a telephone hearing scheduled for May 17, 2022, at 3:00 PM. Claimant, Nicholas Blocker, did not participate. Employer participated through Kristen Fisher, human resources director and party representative, and Mike Kitsmiller, police chief. Judicial notice was taken of the administrative record, including DBRO and KFFD.

ISSUES:

Was the separation a layoff, discharge for misconduct or a voluntary quit without good cause?
Was the claimant overpaid benefits?
Should claimant repay benefits and/or charge employer due to employer participation in fact finding?

FINDINGS OF FACT:

Having heard the testimony and reviewed the evidence in the record, the undersigned finds:

Claimant's first day of work was March 29, 2016, and his last day worked was March 15, 2022. Claimant was a fulltime police officer with a set schedule. In January 2022, claimant was put on administrative leave to investigate his allegations he was being harassed regarding employer's request for a doctor's release for claimant's return to duty when claimant had been out on leave due to COVID. Claimant also asserted he was being treated differently due to his medical condition and for use of sick days and there was retaliation. Employer hired outside counsel to conduct an investigation. The investigation determined claimant was dishonest a number of times regarding claimant's allegations. The Police Chief interviewed claimant after receiving counsel's report and found claimant was further dishonest in violation of the city's and police department's

policies. Claimant was dishonest regarding emails about the doctor's note; and when he denied ever expressing concern regarding his safety and the safety of others, when there was an email where he raised that concern to try to advance another of his claims. It was found claimant was dishonest when asked if he was looking for other employment during a window of time when he was seeking a designation within the police department, when he knew of another officer who didn't get the designation due to seeking other employment, yet claimant had told human resources he was seeking other employment. Claimant asserted he had undiagnosed PTSD, yet contemporaneous to that assertion, there was a text from claimant found in the investigation effectively stating what if I (claimant) hypothetically had an issue like PTSD, which I (claimant) don't have by the way. Claimant asserted individuals (a number of which were police officers) heard him called names. No one verified claimant's accounts, stating either it did not happen, or they did not recall it happening and they believed they'd recall it if it did happen.

Employer has an employee handbook. Claimant was provided access to the handbook. The handbook has a policy regarding dishonesty. The police department has rules and regulations that claimant had access to, which further addresses candor and truthfulness requirements of employees of the police department. Claimant was discharged on March 29, 2016, for multiple acts of dishonesty in violation of employer's policies.

Records show claimant has received \$0.00 in benefits on this claim. His weekly benefit amount is \$651.00. Because claimant received no benefits, the issues of overpayment, repayment and charging the employer depending upon their level of participation in factfinding is moot.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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.

Iowa Admin. Code r. 871-24.1(113)c provides:

(113) Separations. All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.

c. *Discharge*. A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, failure to pass probationary period.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). The Iowa Court of Appeals found substantial evidence of misconduct in testimony that the claimant worked slower than he was capable of working and would temporarily and briefly improve following oral reprimands. *Sellers v. Emp't Appeal Bd.*, 531 N.W.2d 645 (Iowa Ct. App. 1995). Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990). Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988).

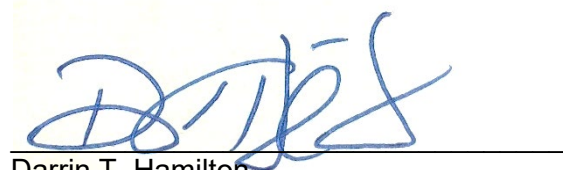
Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). The focus of the administrative code definition of misconduct is on deliberate, intentional or culpable acts by the employee. *Id.*

Multiple acts of dishonesty, getting caught in lies, for a police officer, whose honesty and integrity is vital for a police officer to be effective, is misconduct. The employer has presented substantial and credible evidence of the acts of misconducts. This behavior was contrary to the best interests of the employer and is disqualifying misconduct. Claimant was aware of the policy or should have been aware, having received access to the city's handbook and department's rules and regulations. Claimant violated workplace rules.

The remaining issues of whether claimant has been overpaid benefits, should repay benefits and whether the employer should be charged are moot since the claimant received \$0.00 in benefits on his claim of unemployment.

DECISION:

The March 30, 2022, (reference 01) unemployment insurance decision is **REVERSED**. Claimant was discharged for misconduct on March 15, 2022. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. Claimant received \$0.00 in benefits, and therefore the issues of overpayment, repayment and charging the employer are moot.



Darrin T. Hamilton
Administrative Law Judge

July 28, 2022
Decision Dated and Mailed

dh/scn

APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
Online: eab.iowa.gov**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf> or by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que se encuentra en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf> o comunicándose con el Tribunal de Distrito Secretario del tribunal <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.