

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TRAVIS G HODGES
Claimant

APPEAL NO. 09A-UI-02747-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

FT DODGE CORRECTIONAL FACILITY
Employer

OC: 01/18/09
Claimant: Appellant (1)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Travis Hodges, filed an appeal from a decision dated February 12, 2009, reference 01. The decision disqualified him from receiving unemployment benefits. After due notice was issued a hearing was held by telephone conference call on March 17, 2009. The claimant participated on his own behalf. The employer, Fort Dodge Correctional Facility (FDCF), participated by Major Leslie Wagers, Human Resources Associate Nancy Strait, and was represented by TALX in the person of David Williams. Exhibit One was admitted into the record.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Travis Hodges was employed by FDCF from March 23, 2007 until January 23, 2009 as a full-time correctional officer. He received, and signed an acknowledgement for, the company policies including those which applied to accessing restricted or confidential information on the ICON computer system. During the course of his employment he received two disciplinary suspensions and one final written warning.

On January 2, 2009, Warden Cornell Smith was notified the claimant had accessed the ICON system and accessed confidential information on co-workers and friends on several dates starting in August 2008. Warden Smith contacted Major Leslie Wagers who began an investigation after notifying the claimant he was being investigated.

The investigation consisted of interviewing several staff members and the claimant. The claimant admitted he had accessed the ICON system several times looking up co-workers and friends for personal information and any criminal activity on their record. This was not done for any legitimate work-related reasons but “idle curiosity.”

The investigation was concluded and Major Wagers wrote up a summary of the investigation and submitted it to the warden with a recommendation the claimant be discharged. This recommendation was based on the seriousness of violating the confidentiality policy but also on the progressive disciplinary policies which took into account his three previous disciplinary actions.

The claimant was suspended January 22, 2009, and discharged the next day by Warden Smith.

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.

The claimant never denied knowingly and willfully violating the confidentiality policies, accessing personal information of co-workers and friends on more than one occasion. His only argument was that he should not have been fired for this but given another ten-day suspension. The administrative law judge does not understand the logic in this because he had received sufficient other disciplinary actions in the past. In addition, the policy clearly states violating the confidentiality policy is grounds for disciplinary action up to and including discharge.

Whatever the claimant's personal opinion is regarding the appropriate discipline for his violation of policy, it is not relevant. The employer made the decision to discharge based on Mr. Hodges' violation of a known company policy after receiving several other disciplinary actions for other policy violations. It has met its burden of proof to establish the claimant was guilty of

misconduct. In conjunction with the prior warnings for other policy violations, it is sufficient to warrant a denial of unemployment benefits. The claimant is disqualified.

DECISION:

The representative's decision of February 12, 2009, reference 01, is affirmed. Travis Hodges is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount, provided he is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/pjs