

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**MAURICE HUNLEY**  
Claimant

**REMEDY INTELLIGENT STAFFING INC**  
Employer

**APPEAL NO. 14O-UI-10501-B2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 05/25/14**  
**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

Claimant filed an appeal from a decision of a representative dated June 13, 2014, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on October 31, 2014. Claimant participated personally. Employer participated by Nate Castillo.

**ISSUE:**

The issue in this matter is whether claimant was discharged for misconduct.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on May 28, 2014. Employer discharged claimant on June 12, 2014 because claimant admitted during a fact-finding interview that he had been convicted of felonies as an adult.

Claimant had been working at a job assignment provided by employer. The assignment chose to no longer continue claimant's employment, and as employer had no other employment for claimant, claimant filed for unemployment. At the fact-finding hearing, claimant admitted to a previous prison sentence he had received after being convicted of a felony nearly 30 years ago. Claimant also admitted to another felony he had been convicted of 10 or so years ago. Employer's application and employee handbook that employer handed out to claimant as a new hire stated, "I understand that any misrepresentation, falsification or material misrepresentation on application or in interview process regardless of when discovered may result in my immediate termination of employment at any time." Employer did not furnish the application to the administrative law judge, but stated that he was holding the signed application from claimant.

Claimant stated that the application employer spoke of was different than the one he filled out. The application that he filled out stated only that applicants need to mention felonies within the last seven years. Claimant further stated that when he filled out the application, he had mentioned his recent theft conviction, but the interviewer told him to erase that conviction and

not mention it on the application. Employer read a separate part of the application that mentions driving violations within the last seven years, but stated that there was no time limit included on the application for criminal convictions.

Employer stated that claimant was dismissed for misrepresenting himself on the application. He stated Claimant was not dismissed for the crimes themselves, but for omitting to mention them on his application.

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

Iowa Code § 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. 871-24.32(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(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.

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982), Iowa Code § 96.5-2-a.

In order to establish misconduct as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. Rule 871 IAC 24.32(1)a; *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445 (Iowa 1979); *Henry v. Iowa Department of Job Service*, 391 N.W.2d 731, 735 (Iowa Ct. App. 1986). The conduct must show a 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 the employee's duties and obligations to the employer. Rule 871 IAC 24.32(1)a; *Huntoon* supra; *Henry* supra.

In this matter, the evidence established that claimant was discharged for an act of misconduct when claimant violated employer's policy concerning honestly filling out the employment application. Claimant was warned concerning this policy.

The last incident, which brought about the discharge, constitutes misconduct because claimant was not honest about his criminal convictions. The administrative law judge believes the application did not mention a time frame for convictions. The administrative law judge holds that claimant was discharged for an act of misconduct and, as such, is disqualified for the receipt of unemployment insurance benefits.

**DECISION:**

The decision of the representative dated June 13, 2014, 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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Blair A. Bennett  
Administrative Law Judge

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Decision Dated and Mailed

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