

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GARY HAGAN
Claimant

APPEAL NO. 11A-UI-10604-W

**ADMINISTRATIVE LAW JUDGE
DECISION**

CITY OF DES MOINES
Employer

**OC: 7/17/11
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Claimant filed an appeal from a fact-finding decision dated August 8, 2011, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, an in-person hearing was scheduled for and held on September 21, 2011. Claimant participated through Attorney Charles Gribble. Employer Exhibits A through M were admitted into evidence. Claimant Exhibits 1 through 4 were admitted on the date of the hearing. The record was held open until December 9, when Exhibits 5-6 were received. Exhibits 4-6 are disks of video taken by airport security.¹

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 the following facts. Mr. Hagan began working for the City of Des Moines on September 2001. He began working as a marketing coordinator for the Des Moines International Airport on August 9, 2003. His employment history was good. In his position as marketing coordinator, he had a “blue badge” security access level. This is a relatively high level of security access which allowed him, on occasion, to bypass normal security processes. Specifically, he could escort individuals past security checkpoints into the “sterile” area near the boarding gates.

¹ The employer has asked that certain exhibits be sealed. These exhibits are property of the employer which, if released, could compromise airport security. The claimant has no objection. The undersigned has reviewed all such documents and finds that Employer Exhibits C, D, E, F, J and K should be sealed for reasons of public safety, in addition to Claimant Exhibits 3, 4, 5 and 6. These documents essentially contain information which is characterized as air safety trade secrets. Administrative proceedings are ordinarily open to the public. Iowa Code section 17A.12(7) (2011). These documents are sealed under the authority provided in Iowa Code section 17A.3(e) (2011). The recorded proceedings, as well as the decision, however, are public.

Mr. Hagan was discharged on June 28, 2011 by the City due to a security incident caused by him which occurred on March 18, 2011. On said date, Mr. Hagan was working as usual. Bryon Mason, a medical student and business owner, arrived at the airport just after 11:45 a.m. Mr. Mason was a ticketed passenger on Allegiant Airlines. He had his ticket with him. His flight was scheduled to depart at 12:40 p.m. He had a ticket to Clearwater, Florida to meet his wife and children. He approached the ticket counter at Allegiant Airlines and made eye contact with a ticket agent. The ticket agent, however, turned and walked away. Mr. Mason tracked down a person he believed to be a baggage handler and asked him to help him find someone to obtain his boarding pass. The individual returned moments later and said he could not find anyone.

At this point, Mr. Mason called his wife and indicated that he missed his flight. She urged him to try to get help to make his flight so he could see his family on break. Mr. Mason then approached a TSA agent. He told his story and indicated that he felt that he should still have time to get on his flight. The TSA agent walked him directly to the Information Desk. There, the TSA agent and the staff person at the Information Desk held a discussion about how they could help him. They ultimately called Mr. Hagan. While this type of customer service issue was generally within Mr. Hagan's job description, he had never encountered this type of issue previously.

Mr. Hagan and Mr. Mason were acquaintances who knew one another from church. Mr. Hagan assessed the situation quickly with the assistance of the Information Desk. The TSA agent was nearby monitoring the situation. He looked over Mr. Mason's ticket information. He attempted to contact the airline. Mr. Hagan then decided upon a plan of action. Specifically, he decided to escort Mr. Mason past security to the departure gate in the sterile area. He provided Mr. Mason very specific instructions to stay with him at all times and follow his directions. Once Mr. Hagan arrived at the departure gate, TSA arrived. Mr. Hagan explained what was going on and the agents allowed Mr. Mason to obtain his boarding pass. Nevertheless, the security bypass generated a TSA alert which turned into a significant security incident.

Mr. Hagan and Mr. Mason walked back to the security checkpoint with the TSA agents. After Mr. Hagan departed, Mr. Mason was approached by a different TSA agent who questioned him rather intensely about his activities. After a period of questioning, Mr. Mason was allowed to go through security and board the flight. All passengers for this flight were required to leave the sterile area and go back through security because of the security breach.

TSA immediately began an investigation, the initial results of which were shared with the City. Mr. Hagan was on disciplinary suspension from March 19, 2011 until the date of his termination. At the time of hearing, TSA had not completed its investigation or taken any action against any party.

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 term "misconduct" under Iowa law may encompass many different types of conduct. The phrase "material breach of a worker's contract of employment" is significant. This phrase essentially means that the employer must prove the worker intentionally violated a reasonable employment standard. The rule essentially anticipates two general types of misconduct under Iowa law, broadly categorized as universal misconduct and work rule misconduct.

Universal misconduct would include misconduct which any reasonable worker should reasonably know is a violation of any employer's work standards. Examples of this type of misconduct would include theft from the employer, initiating violence in the workplace without justification, intentionally damaging property and other intentional acts evincing a willful disregard for the employer's interest. In other words, any worker in the competitive job market should understand that they would be fired for such a violation regardless of whether a formal or specific work rule is in place.

"Work rule" misconduct would include reasonable standards or rules which an employer sets for its place of employment which a worker knowingly violates. In essence, it is a standard because the employer said it is. In such instances, the burden is upon the employer to demonstrate that it had a reasonable work rule, the worker was aware of the rule, and knowingly violated the rule. Examples of this type of "work rule" misconduct would include tardiness violations, violations of a cell phone use policy, and dress code violations. Importantly, different employers and different industries may have different reasonable work standards on these topics and acceptable behavior is often relative.

In this case, there is no specific work rule. The City argues, broadly speaking, that the claimant committed a general safety violation which was so significant as to amount to misconduct. Violation of a significant safety protocol certainly could amount to universal misconduct. The City argues that although it did not have a specific work rule, there is a widely recognized industry standard in the airline industry that every employee should know, namely, an employee should never escort a passenger past a security checkpoint into a sterile area for any reason. Not only is this an industry standard and general practice, according to City Airport officials, this

is codified in the federal rules. The City further argues that Mr. Hagan was trained about proper security protocols.

The City, however, has not met its burden of proof to demonstrate that Mr. Hagan's actions amounted to an intentional violation of a known employment standard, either universal or "work rule." When viewing his actions in the context of the record as a whole, Mr. Hagan's conduct did not demonstrate any type of intentional disregard for the employer's standards. His actions, at worst, would be more appropriately characterized as an isolated, good faith error in judgment or discretion.

The evidence demonstrated that Mr. Hagan was attempting to assist a customer who he reasonably believed had been provided very poor customer service by one of the airlines. The customer approached a TSA agent who directed him to the Information Desk. Mr. Hagan was contacted to assist, which was part of his job. After reviewing the situation, he decided to attempt to take the customer past security in order to receive a boarding pass and then take him back to the security checkpoint. This was undoubtedly a mistake. With the benefit of hindsight, a better choice would have been to take the matter to a TSA official who had authority to review the matter. Nevertheless, while this was poor judgment, it was not the type of willful or intentional act which disqualifies an individual from receipt of unemployment. It was not "carelessness or negligence of such a degree of recurrence as to manifest equal culpability, wrongful intent or evil design."

Mr. Hagan was, by far, the most significant witness in this case. He acknowledged his mistakes and gave straightforward answers. Based upon his demeanor at hearing, he is found credible. His motives and intent were pure. His intent was simply to help a customer.

The City does have a right to expect its employees to understand essential security protocols. Mr. Hagan had a great deal of authority to take individuals into the sterile area past the security checkpoints and with great power comes great responsibility. He described that authority, as he understood it, in detail at hearing. At the moment he made the decision to bypass the security checkpoint, he saw no difference between escorting a member of the media past security and escorting a passenger to obtain a boarding pass. The fact is, there is nothing anywhere in the record outlining that Mr. Hagan did not have this authority. There is no written rule which states this. There are no training materials prior to this incident which state this. In fact, since this incident, the City has revised its training in an effort to clarify that passengers are never to bypass security procedures. To the extent the City claims there is an industry standard which amounts to a "work rule," this assertion is belied by the testimony of Mr. Hagan and his witness, Mark Ziino, an Aviation Systems Technician. Mr. Ziino, like Mr. Hagan has high security clearance. He testified under oath that he was unaware of any distinction in escort procedures for passengers and others who bypass security.²

Due to all of the foregoing, the undersigned administrative law judge finds that there was no misconduct in this case based upon the claimant escorting a passenger past the security checkpoint in order to obtain a boarding pass. The employer also claimed that Mr. Hagan engaged in a second security protocol violation when he failed to stay within "sight and sound" of the passenger he was escorting. The undersigned has thoroughly reviewed three videos of

² It is important to note that the undisputed record established that Mr. Hagan bypassed security in order to obtain a boarding pass for a customer. He did not attempt to avoid the screening of the customer before in order to allow him to board the plane. It would certainly be a violation of a known security standard to bypass security screening in order to allow a passenger to board a plane without being screened. Mr. Hagan even conceded this point. This, however, is not what occurred in this case.

the escort which took place on March 18, 2011, and finds that Mr. Hagan appeared to do a reasonable job of keeping the passenger within his sight and sound based upon the circumstances. Mr. Hagan stayed with the passenger for the entire time until he reached the gate when he approached the airline staff. He appeared to be attempting to watch the passenger at all relevant times at least until he reached the gate. By the time Mr. Hagan reached the gate, TSA personnel had arrived and he obviously knew this.

The City relies upon the opinion of Deputy Aviation Director Kenneth McCoy that the claimant should have maintained closer contact with the escorted passenger. Mr. McCoy is much better qualified than the undersigned to determine whether his escort performance was in complete, technical compliance with the manner in which a person should be escorted into the sterile area. The City also relies upon the hearsay TSA report. Very little weight is given to this report in this context. The report contained other inaccuracies and was never subjected to cross-examination. While the escort may have been substandard in some regards, it did not amount to misconduct under Iowa law. At most the violations were technical. There was not the type of neglect of duty which would be required to support a finding of misconduct.

Having stated this, the undersigned fully understands what is at stake in the escort process. An individual being escorted could assist with an act of terrorism by bypassing security and delivering a weapon or a bomb to the sterile area. For this reason, any individual escorting another person into the sterile area must take the responsibility seriously. This is of course true whether the escorted individual is a passenger receiving a boarding pass or a contractor or news reporter. The record reflects that Mr. Hagan did take the responsibility seriously. When the record is viewed as a whole, however, the undersigned finds it highly unlikely that the City would have truly terminated the claimant based merely upon the escort itself since Mr. Hagan testified credibly that he conducted escorts of multiple individuals in a similar manner which were never questioned or scrutinized.

With all of the foregoing discussion, the undersigned of course renders no opinion about whether the employer had "just cause" to terminate the claimant under the authority of its collective bargaining agreement. In this case, it is merely found that the termination does not amount to "misconduct" as that term is defined under Iowa unemployment insurance law for the reasons stated above.

DECISION:

The fact-finding decision dated August 8, 2011, reference 01, is reversed. Claimant is eligible to receive unemployment insurance benefits, provided claimant meets all other eligibility requirements.

Joseph L. Walsh
Administrative Law Judge

Decision Dated and Mailed

jlw/css