

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JACOB R ANDERSON
Claimant

APPEAL NO. 09A-UI-11848-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SIoux COUNTY
Employer

**Original Claim: 07/05/09
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge
871 IAC 24.32(8) – Current Act of Misconduct

STATEMENT OF THE CASE:

Sioux County filed a timely appeal from an unemployment insurance decision dated August 11, 2009, reference 02, that allowed benefits to Jacob R. Anderson. After due notice was issued, a hearing was held in Sioux City, Iowa, September 16, 2009, with Mr. Anderson participating. Mark Sybesma and Dale Vander Berg testified for the employer, which was represented by Coleman McAllister, Sioux County Attorney. Exhibits A through E were admitted into evidence.

ISSUE:

Was the claimant discharged for a current act of misconduct?

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Jacob R. Anderson was employed as Sioux County Emergency Management Coordinator from July 3, 2007, until June 30, 2009. Although hired by the Sioux County Board of Supervisors, he served at the pleasure of the Sioux County Emergency Management Board. At its meeting on January 7, 2009, the board considered the possibility of consolidating the emergency management coordinator's position with the sheriff's department. On January 27, 2009, the Sioux County Board of Supervisors and Sheriff Dan Altena discussed the reassignment on a part-time basis of the Emergency Management Services Department to the Sheriff's Department. With the addition an additional deputy, Sheriff Altena hoped that the department would spend less on overtime and on the cost of hiring reserve deputies. On February 4, 2009, the Sioux County Emergency Management Board unanimously approved merging the position of emergency management director into the sheriff's department. Mr. Anderson was advised that his employment would end June 30, 2009.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence establishes that the claimant was discharged for disqualifying misconduct. It does not.

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 employer has the burden of proof. See Iowa Code section 96.6-2. Among the elements it must prove is that the final incident leading directly to the decision to discharge was a current act of misconduct. See 871 IAC 24.32(8).

Testimony by the employer's witnesses that the claimant was discharged for moving outside of the county was contradicted by the claimant's testimony and is not corroborated in any sense by the documentary evidence in the file. The administrative law judge also notes that the employer provided no documentation in support of the testimony that Mr. Anderson was required to live within the boundaries of Sioux County. While this seems to be a reasonable expectation given the claimant's position, the employer has not established by a preponderance of the evidence that the requirement even existed.

Moreover, it is clear from the evidence that the claimant knew in early February that his employment would end June 30, 2009. Whatever the reason for the separation, it was not a current incident as of June 30, 2009. No disqualification may be imposed.

DECISION:

The unemployment insurance decision dated August 11, 2009, reference 02, is affirmed. The claimant is entitled to receive unemployment insurance benefits, provided he is otherwise eligible.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw