

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

RAYMOND LALUMENDRE
2701 CENTER ST
SIOUX CITY IA 51103

LENFRED INC
LAURENCE'S FOODS
2020 - 27TH
SIOUX CITY IA 51104

Appeal Number: 06A-UI-02209-B
OC: 01/29/06 R: 01
Claimant: Appellant (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

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.

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.

YOU MAY REPRESENT yourself in this appeal or you may 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. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96 5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Raymond Lalumendre (claimant) appealed an unemployment insurance decision dated February 15, 2006, reference 01, which held that he was not eligible for unemployment insurance benefits because he was discharged from Laurence's Foods (employer) for work-connected misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a hearing was held in Sioux City, Iowa on April 24, 2006. The claimant participated in the hearing. The employer participated through Mark Schmidt, Manager. Employer's Exhibits One and Two and Exhibit D-1 were admitted into evidence.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a full-time redemption center employee and bagger from December 18, 2004 through January 29, 2006. The employer's facility is within 120 yards of a school and at the time of hire, the claimant failed to disclose he had two convictions for illegal acts against a child. In 1987, the claimant was convicted for child molesting and lewd acts upon a child. The employer was unaware of this information until two teachers from the nearby school made him aware of it. The teachers gave a magazine to the employer that had pictures of convicted child molesters and the claimant's picture with his convictions listed below was right in the middle of the page. The teachers advised the employer they would no longer patronize his store if the claimant continued to work there. The employer checked on the computer to determine if the claimant really had been convicted as a child molester and it was confirmed. The claimant was subsequently discharged for his failure to disclose this pertinent information to the employer.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. 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 section 96.5-2-a.

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 to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The claimant was discharged for failing to disclose to the employer at the time of hire that he was a convicted child molester. When a person willfully and deliberately makes a false statement on an employment application, such falsification shall be an act of misconduct in connection with the employer. The employer provided an employment application from the claimant which did not have any information provided in the question on convictions. The claimant denies he completed that application even though it contains personal information. While the writing on the employment application appears to be similar to the writing on the claimant's appeal letter, it is not necessary to resolve that question. This is because the false statement need not be written and an omission of a pertinent fact would have the same effect.

The falsification must be such that it does or could result in endangering the health, safety or morals of the applicant or others, or result in exposing the employer to legal liabilities or penalties, or result in placing the employer in jeopardy. 871 IAC 24.32(6). The Iowa Supreme Court has stated that a misrepresentation on a job application must be materially related to job performance to disqualify a claimant from receiving unemployment insurance benefits. Larson v. Employment Appeal Board, 474 N.W.2d 570, 571 (Iowa 1991). While this statement is dicta since the court ultimately decided Larson was discharged for incompetence not her deceit on her application, the reasoning is persuasive. The court does not define materiality but cites Independent School Dist. v. Hansen, 412 N.W.2d 320, 323 (Minn. App. 1987), which states a misrepresentation is not material if a truthful answer would not have prevented the person from being hired.

In the case herein, the evidence does establish that the claimant would not have been hired if he had truthfully disclosed his conviction as a child molester. The employer could be subject to legal liabilities or penalties as a result of the claimant's employment in a facility located within 120 yards of a school for small children. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

DECISION:

The unemployment insurance decision dated February 15, 2006, reference 01, is affirmed. The claimant is not eligible to receive unemployment insurance benefits because he was discharged from work for misconduct. Benefits are withheld until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

sdb/tjc