

**IOWA DEPARTMENT OF INSPECTIONS AND APPEALS
ADMINISTRATIVE HEARINGS DIVISION, UI APPEALS BUREAU**

MATTHEW J ROBERTS
Claimant

APPEAL NO. 22A-UI-18314-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

GREENE COUNTY
Employer

**OC: 09/25/22
Claimant: Appellant (1)**

Iowa Code Section 96.5(2)(a) & (d) – Discharge for Misconduct

STATEMENT OF THE CASE:

On October 25, 2022, Matthew Roberts (claimant) filed a timely appeal from the October 20, 2022 (reference 01) decision that disqualified the claimant for benefits and that relieved the employer's account of liability for benefits, based on the deputy's conclusion that the claimant was discharged on September 29, 2022 for misconduct in connection with the employment. After due notice was issued, the appeal hearing commenced on November 15, 2022, recommenced on January 4, 2023 and concluded on January 5, 2023. The claimant participated. Thomas Laehn, Greene County Attorney, represented the employer and presented testimony through Jack Williams, Brandon Gustof, and Stacy Meyers. Exhibits 1 through 11, A, B and C, were received into evidence.

ISSUE:

Whether the claimant was discharged for misconduct in connection with the employment that disqualifies the claimant for unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

Matthew Roberts (claimant) was employed by the Greene County Sheriff's office as a full-time Communication Dispatcher from 2010 and last performed work for the employer on September 20, 2022. Jack Williams, Greene County Sheriff, was Mr. Roberts' supervisor during the final six years of the employment. Mr. Roberts performed his dispatcher duties in the dispatch center located within the Greene County Law Enforcement Center. Mr. Roberts' duties included answering 911 emergency calls and other calls, dispatching law enforcement and emergency medical personnel, entering warrant information for the Greene County Sheriff and Jefferson Police Department. Mr. Roberts worked the overnight shift, 6:00 p.m. to 6:00 a.m. Mr. Roberts' overnight duties also included monitoring surveillance cameras in the Greene County Jail to assist with overnight jail safety and security.

On September 20, 2022, Sheriff Williams initially notified Mr. Roberts that he was discharged from the employment for misappropriating County resources. The sheriff then rescinded the

discharge and placed Mr. Roberts on administrative leave, pending a final determination of whether Mr. Roberts would be discharged from the employment. On September 26, 2022, Sheriff Williams met with Mr. Roberts and a union representative met for a Loudermill hearing, as a final step before Sheriff Williams discharged Mr. Roberts from the employment on September 29, 2022.

In May 2022, Sheriff Williams was concerned about an outsized printing expense associated with employees, especially Mr. Roberts, using the County's equipment for non-County business. It was common knowledge that Mr. Roberts operated a scrap metal business and that Mr. Roberts participated in additional online auction activities. On May 24, 2022, Sheriff Williams conspicuously posted a memo addressed to all Greene County Sheriff's Office employees regarding use of County computers and other equipment. The memo stated:

1. We have been watching and personal stuff is being printed in black and white and color.
2. The work computers are being used for personal use.

This will stop as the tax payers are paying for it and it is in the policy that they will not be used for personal use. If you need more to do while working let me know and I will find more to do. If this continues you may be written up, suspended, or terminated.

Mr. Roberts reviewed the May 24, 2022 posting. While the posting was sufficient to curtail most Sheriff's Office staff from using County equipment for personal business, the posting had little impact on Mr. Roberts. At about the same time the Sheriff posted the memo, Mr. Roberts was establishing another business venture, Raccoon River Valley Auctions. Mr. Roberts' business venture include a website and associated online auction business. The website describes the business as "a small auction house serving the West Central Raccoon River Valley area, centrally located in Jefferson[,] Iowa" and as "an estate and consignment auction house solely focused on online bid[d]ing." During the last few months of the County employment, Mr. Roberts routinely converted County resources, including County time, County computer equipment, and County personnel for use in his auction enterprise. This included having auction customers come to the Law Enforcement Center to pay for and collect auctioned merchandise. Mr. Roberts at times had Sheriff's Office personnel function as his business clerk, having them receive money from auction customers and disburse merchandise to customers at the Law Enforcement Center front counter. Mr. Roberts brought merchandise to the Law Enforcement Center for the purpose of having Sheriff's Office staff assist with sorting, pricing and purchasing merchandise. Mr. Roberts routinely used County computers to scour online for potential merchandise to include in his auction business. Mr. Roberts kept records of some of this activity on County paper that he kept in his assigned drawer in the dispatch center.

In August 2022, Sheriff Williams had online tracking software installed on County computers. The software tracked Mr. Roberts' online activities and documented an immense record of Mr. Roberts converting County resources for use in Mr. Roberts' for-profit enterprise. Mr. Roberts' ongoing conversion of County resources to his personal enterprise, and the Sheriff's investigation of those activities, continued until September 20, 2022, when Sheriff Williams placed Mr. Roberts on administrative leave.

At some point in Sheriff Williams' investigation of Mr. Roberts' conduct he became mindful that Mr. Roberts' actions not only violated County policy, but also likely constituted criminal conduct in violation of Iowa Code 68B.2A, regarding conflicts of interest, outside employment and activities.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(2)(a) provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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). The Iowa Legislature recently codified the definition of misconduct and included a list of conduct that constitutes disqualifying misconduct in connection the employment. See Iowa Code section 96.5(2)(d). This list includes knowing violation of a reasonable and uniformly enforced employer rule, theft of employer property, and intentional misrepresentation of time worked or work carried out that results in the individual receiving unearned wages or unearned benefits. See Iowa Code section 96.5(2)(d)(2), (13) and (14).

The employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See *Lee v. Employment Appeal Board*, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See *Gimbel v. Employment Appeal Board*, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

While past acts and warnings can be used to determine the magnitude of the current act of misconduct, a discharge for misconduct cannot be based on such past act(s). The termination

of employment must be based on a current act. See 871 IAC 24.32(8). In determining whether the conduct that prompted the discharge constituted a “current act,” the administrative law judge considers the date on which the conduct came to the attention of the employer and the date on which the employer notified the claimant that the conduct subjected the claimant to possible discharge. See also *Greene v. EAB*, 426 N.W.2d 659, 662 (Iowa App. 1988).

Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. See Iowa Administrative Code rule 871-24.32(4).

Continued failure to follow reasonable instructions constitutes misconduct. See *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990). An employee’s failure to perform a specific task may not constitute misconduct if such failure is in good faith or for good cause. See *Woods v. Iowa Department of Job Service*, 327 N.W.2d 768, 771 (Iowa 1982). The administrative law judge must analyze situations involving alleged insubordination by evaluating the reasonableness of the employer’s request in light of the circumstances, along with the worker’s reason for non-compliance. See *Endicott v. Iowa Department of Job Service*, 367 N.W.2d 300 (Iowa Ct. App. 1985).

The evidence in the record establishes a September 29, 2022 discharge for misconduct in connection with the employment. The claimant knowingly and intentionally engaged in a months-long, escalating and brazen conversion of County taxpayer resources to personal gain in violation of County policy and in violation of the sheriff’s reasonable directive. The claimant’s intentional misuse and conversion of public resources for use in his personal business enterprise is shocking, as are the claimant’s attempts to excuse, minimize and deflect. The weight of the evidence indicates that much of the claimant’s excusing, minimizing and deflecting testimony was false and intentionally misleading. The claimant’s conduct included theft of County time, both through his own activities and through enlistment of coworkers in his private enterprise. The claimant’s conduct clearly demonstrated a willful and wanton disregard for the employer’s interests. The fact that the sheriff avoided directly confronting the claimant about the conduct until September 20, 2022 in no manner mitigates or excuses the claimant’s ongoing, intentional misconduct. The claimant is disqualified for benefits until the claimant has worked in and been paid wages for insured work equal to 10 times the claimant’s weekly benefit amount. The claimant must meet all other eligibility requirements. The employer’s account shall not be charged for benefits.

DECISION:

The October 20, 2022 (reference 01) decision is AFFIRMED. The claimant was discharged on September 29, 2022 for misconduct in connection with the employment. The claimant is disqualified for benefits until the claimant has worked in and been paid wages for insured work equal to 10 times the claimant's weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account shall not be charged for benefits.



James E. Timberland
Administrative Law Judge

January 20, 2023
Decision Dated and Mailed

scn

APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
Online: eab.iowa.gov**

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.

AN APPEAL TO THE BOARD SHALL 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.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or 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.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que está en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.