

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

STEVE R NOECKER
Claimant

APPEAL NO. 06A-UI-09214-N

**ADMINISTRATIVE LAW JUDGE
DECISION**

**FOURTH JUDICIAL DISTRICT
DEPT OF CORRECTIONAL SERVICES**
Employer

**OC: 08-13-06 R: 01
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the September 8, 2006, reference 01, fact-finder's decision that held the claimant was not eligible to receive unemployment insurance benefits because the claimant had been discharged for conduct not in the best interest of the employer. After hearing notices were mailed to the parties, a hearing was conducted in Council Bluffs, Iowa on October 10, 2006. The claimant appeared personally and testified on his own behalf. Appearing as witnesses for the employer were Mr. Robert Schroder, Facility Manager and Mr. Wayne Reed, Residential Supervisor. Employer's Exhibits One through Ten were received into evidence. Claimant's Exhibit A was received into evidence.

ISSUE:

Was the claimant discharged for misconduct in connection with his employment?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds the following facts: Steve Noecker was employed by the Fourth Judicial District, Department of Correctional Services, as a residential officer. Mr. Noecker was employed from July 22, 1998, until July 29, 2006 when he was discharged from employment. His immediate supervisor was Wayne Reed, Residential Supervisor.

Mr. Noecker was discharged from the Department of Correctional Services based upon the results of an investigation that concluded that Mr. Noecker had not provided truthful statements to the employer in its investigation of an incident that had occurred at the claimant's residence on or about July 15, 2006. In the early morning hours of that date Mr. Noecker was involved in a physical altercation with his 16-year-old adolescent son. Mr. Noecker at the time was attempting to counsel his son and an exchange between the parties escalated into a physical confrontation. During the course of the confrontation, Mr. Noecker's son suffered a bloodied nose. The following morning the Council Bluffs police arrived and took a statement from the claimant. Mr. Noecker contacted his employer the following morning to report that he had been arrested for assault on his son. Initial police reports and the statement given by the claimant to

the facility manager reflected that Mr. Schroder stated that he had struck his son with a closed fist. The claimant was initially allowed to continue working pending an ongoing investigation.

Subsequently, the matter was further investigated and additional statements were taken. Because the employer noted that Mr. Noecker seemed to be providing conflicting statements as the investigation proceeded, Mr. Noecker was cautioned that providing conflicting statements withholding the truth would be considered a serious infraction and might jeopardize his employment. Mr. Noecker maintained at that time that his son's bloody nose must have been caused by Mr. Noecker's elbow or forearm during the altercation and that he did not strike the adolescent with a closed fist.

Based upon the inconsistencies in Mr. Noecker's statements during the investigation and the previous statements attributed to him by the Council Bluffs police as well as Mr. Schroder, the facility manager, the Department of Correctional Services concluded that Mr. Noecker contradicted himself during the investigatory review and that the claimant's failure to provide truthful statements impeded the investigation and were not honest and, therefore, conduct unbecoming a correctional officer. A decision was made to terminate Mr. Noecker for these reasons.

REASONING AND CONCLUSIONS OF LAW:

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The evidence in the record establishes that contradictory statements were received by the Council Bluffs police department, the correctional facility manager, and the Department of Correctional Services investigator regarding the claimant's conduct during an altercation with his adolescent son on or about July 15, 2006. A review of the exhibits shows that a number of statements both by Mr. Noecker and other individuals associated with the incident specifically indicate that Mr. Noecker did, during the altercation strike his son with a closed fist on more than one occasion. Although it appears that this action may have been warranted and caused in no

small part by Mr. Noecker's son's actions that night, the question before the administrative law judge is whether Mr. Noecker subsequently intentionally provided statements that were less than truthful to his employer in an effort to alter the facts and alter the outcome of the investigation.

Although the administrative law judge is sympathetic to Mr. Noecker's plight, a review of the evidence clearly demonstrates that the employer has by a preponderance of the evidence established that Mr. Noecker's version of what transpired on the night of July 15, 2006, has substantially varied. In addition to the police reports, Mr. Schroder, a firsthand witness, testified under oath to his clear recollection that Mr. Noecker did, in fact, clearly state that he had struck his son based upon his son's conduct during the night in question. Subsequently, Mr. Noecker has maintained that the adolescent's bloody nose was caused by Mr. Noecker's inadvertently hitting his son with an elbow or forearm during the altercation and denied striking his son with a closed fist. A preponderance of the evidence establishes that the claimant's statements during the investigation substantially changed from the initial statement that Mr. Noecker made at the initial reporting. Based upon the sensitive nature of the claimant's employment, the employer reasonably has a high expectation that it must be able to rely on an officer's truth and veracity. The claimant's inconsistent statements demonstrated disregard for the employer's interests and reasonable standards of behavior and thus, was disqualifying under the provisions of the Iowa Employment Security Law.

DECISION:

The agency representative's decision dated September 8, 2006, reference 01, is affirmed. The claimant was discharged for misconduct. The claimant is disqualified for unemployment insurance benefits until he has worked in and has been paid wages for insured work equaling ten times his weekly benefit allowance, providing that he meets all other eligibility requirements.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs