

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

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Appeal Number: 04A-UI-01034-H2T
OC 12-07-03 R 12
Claimant: Appellant (2)

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/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the January 23, 2004, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on April 5, 2004. The claimant did participate and was represented by Douglas Scovil, Attorney at Law. Witnesses for the claimant included Trent Singleton and Calvin Kelso. The employer did participate through Barb McCollom, Human Resources Generalist, Mike Brown, Captain with the Criminal Investigations Division and Internal Affairs, and (representative) Paul Greufe, Assistant County Administrator and Human Resources Director. Claimant's Exhibit's 1 through 21 were received.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a correction officer full time beginning July 27, 2000 through December 11, 2003 when he was discharged. The claimant was discharged for allegedly lying to an investigator and for alleged inappropriate contact with female inmates at the jail. The claimant denies any inappropriate contact with any inmate. No inmates alleging any inappropriate contact testified at the hearing. During the course of the employer's investigations into the allegations made against the claimant, the employer alleges that the claimant lied to Captain Brown and to Investigator Ironrude. The claimant denies misleading or lying to either Captain Brown or Investigator Ironrude.

The claimant was placed on administrative leave on November 24, 2003. The claimant was instructed that he was not to have any contact with the correctional staff. After receiving the November 24, 2003 letter, the claimant had contact with two coworkers, Gerard Trujillo and Calvin Kelso. The claimant did not discuss the nature of the allegations made against him with either coworker.

The notes of the investigation made by the employer were not turned over to the claimant as ordered in the subpoena. Investigator Ironrude did not testify at the hearing.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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.

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 employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The employer discharged the claimant and has the burden of proof to show misconduct. Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). Poor work performance is not misconduct in the absence of evidence of intent. Miller v. Employment Appeal Board, 423 N.W.2d 211 (Iowa App. 1988).

The employer has failed to establish that the claimant had any inappropriate contact with any inmate. Captain Brown's hearsay testimony that the inmates confirmed the inappropriate contact is not as persuasive as the direct denial by the claimant. The claimant had been suspended from work prior to any allegation being made that he had lied during the investigation. While the claimant may not have been as forthcoming as he could have been, the administrative law judge cannot conclude that he lied to investigators to cover up any misconduct. The claimant has always denied that he committed any of the inappropriate contact with any of the inmates. If further details are discovered during the course of the investigation, it cannot be concluded that the initial comments made by the claimant were a deliberate attempt at deception. While the conduct of the claimant may well be grounds for termination, the conduct cannot be found to be substantial misconduct sufficient to disqualify him from receiving unemployment insurance benefits. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The January 23, 2004, reference 01, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

tkh/b