

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**LEO E DORSEY**  
Claimant

**APPEAL NO. 12A-UI-06001-AT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CITY OF NORTHWOOD**  
Employer

**OC: 04/29/12**  
**Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Leo E. Dorsey filed a timely appeal from an unemployment insurance decision dated May 18, 2012, reference 01, that disqualified him for benefits. After due notice was issued, a telephone hearing was held June 14, 2012 with Mr. Dorsey participating and being represented by Benjamin G. Humphrey, Attorney at Law. John Greve, Attorney at Law, appeared on behalf of the employer, City of Northwood. Mayor Randy Severson testified. Employer Exhibits One and Two and Claimant Exhibit A were admitted into evidence.

**ISSUE:**

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

**FINDINGS OF FACT:**

Leo E. Dorsey was serving as chief of police of the City of Northwood Iowa in the spring of 2012. In late March a restraining order was served upon him in a matter concerning his former wife, a resident of the city of Northwood. County Attorney Jeff Greve asked the Blackhawk County Sheriff's office to investigate. He did not ask the Worth County Sheriff's office for assistance because Mr. Dorsey was running for that office against the incumbent. On April 26, 2012 the Blackhawk County Sheriff's office issued a report to Mr. Greve concluding that Mr. Dorsey had conducted acts potentially constituting harassment and theft.

On April 20, 2012, the Iowa District Court for Worth County conducted a hearing on whether the restraining order should remain in effect pending a hearing on a permanent injunction. Mayor Severson attended the hearing, not as a witness but as an observer. During the hearing Mr. Dorsey admitted in court that he had displayed a handgun towards his ex-wife in a public restaurant, indicating that the gun was for her. He acknowledged taking an external hard drive belonging to his ex-wife from her home. The Iowa District Court entered an order continuing the injunction on April 30, 2012. After informally polling members of the City Council, Mayor Severson discharged Mr. Dorsey on May 1, 2012.

## REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in this record establishes that the claimant was discharged for misconduct in connection with the employment. It does.

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).

While Mayor Severson learned of the allegations against Mr. Dorsey in late March, he did not learn details of the allegations until hearing the testimony in court on April 20, 2012 and receiving the report from the Blackhawk County Sheriff that was not filed until April 26, 2012. Under the circumstances, it was appropriate to await the outcome of the court proceedings before taking action on Mr. Dorsey's employment. The administrative law judge concludes that in the context of this case, the employer has established a current act.

The quantum of proof required in a contested case hearing is a preponderance of the evidence, not evidence beyond a reasonable doubt. See Iowa Code Chapter 17A. A preponderance of the evidence in the record establishes that Mr. Dorsey, a law enforcement officer, committed acts that could be viewed as harassment and theft. The injunction could hinder his actions investigating other incidents and his actions at the least call into question his professional

judgment. The administrative law judge concludes that the acts constitute misconduct in connection with the employment. Benefits are withheld.

**DECISION:**

The unemployment insurance decision dated May 18, 2012, reference 01, is affirmed. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

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Dan Anderson  
Administrative Law Judge

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Decision Dated and Mailed

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