

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**TONYA E SCOTT**  
Claimant

**APPEAL NO. 11A-UI-03295-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MOSAIC**  
c/o **JOHNSON & ASSOCIATES**  
Employer

**OC: 01/30/11**  
**Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Claimant filed a timely appeal from a representative's decision dated March 8, 2011, reference 01, which denied unemployment insurance benefits. After due notice a telephone hearing was held on April 6, 2011. Claimant participated personally. The employer participated by Mr. Tom Kuiper, Hearing Representative, and witness, Ms. Nancy Seel, Human Resource Manager.

**ISSUE:**

The issue is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

**FINDINGS OF FACT:**

Having considered all of the evidence in the record, the administrative law judge finds: Tonya Scott was employed by Mosaic as a full-time direct support assistant from September 13, 2006 until her discharge on February 3, 2011. Ms. Scott was paid by the hour. Her immediate supervisor was Kelly Thompson.

Ms. Scott was discharged when it was determined that she had not followed company policy by reporting an arrest and conviction that occurred while she was employed as an employee of Mosaic. At the time of hire Ms. Scott and other workers are specifically informed of the requirement that they self report any arrests or convictions within ten days of the occurrence. This requirement is also stated in the company handbook.

On or about January 23, 2011, it came to the attention of Mosaic management that Ms. Scott had been arrested and subsequently convicted of public intoxication. At that time the employer did a further check and determined that the claimant had been convicted of theft in March 2008 but that the claimant had not reported the conviction to the employer as required by established Mosaic policy. Because the claimant and similarly situated employees work with vulnerable adults in their jobs as direct support assistants, the employer places special emphasis on the

employees' criminal histories and the requirement that any arrest or convictions after becoming employed be reported to the company timely.

**REASONING AND CONCLUSIONS OF LAW:**

The question before the administrative law judge is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits. It does.

Iowa Code § 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 in this matter. See Iowa Code § 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment insurance 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. of Appeals 1992).

Inasmuch as the evidence in the record establishes that Ms. Scott was aware of her responsibility to self report any arrests or convictions after being employed by Mosaic and failed to do so, the administrative law judge concludes that the claimant's conduct showed a disregard for the employer's interests and reasonable standards of behavior that it had a right to expect of their employees under the provisions of the Employment Security Act. The employer's rule was reasonable and Ms. Scott was aware of it. The claimant nevertheless failed to report a

conviction for theft that occurred in 2008 and was discharged on February 3, 2011 when the employer became aware of the claimant's policy violation. Unemployment insurance benefits are withheld.

**DECISION:**

The representative's decision dated March 8, 2011, reference 01, is affirmed. Claimant is disqualified. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, and is otherwise eligible.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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