

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ANDREW D MCGREGORY**  
Claimant

**APPEAL NO. 10A-UI-10147-C**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SECURITAS SECURITY SRVS USA INC**  
Employer

**OC: 08/16/09**  
**Claimant: Appellant (2)**

Section 96.5(2)a – Suspension/Discharge for Misconduct

**STATEMENT OF THE CASE:**

Andrew McGregory filed an appeal from a representative's decision dated July 8, 2010, reference 03, which denied benefits based on his separation from Securitas Security Services USA, Inc. (Securitas). After due notice was issued, a hearing was held on August 23, 2010 in Des Moines, Iowa. Mr. McGregory participated personally. The employer did not appear for the hearing. Documents sent by the employer prior to the hearing were admitted as Exhibits One and Two.

On August 13, 2010, the employer's authorized representative, TALX Corporation, requested that the employer's representative be allowed to participate in the hearing by telephone. The letter confirmed that witnesses would be present at the hearing site. TALX Corporation was verbally notified on August 16, 2010, that the representative could participate by telephone but that the employer would be required to have a witness present at the hearing site. This information was not communicated to the employer or to the attorney retained to represent the employer in the hearing. Inasmuch as the employer had ample notice through its representative that it needed to have a witness available at the in-person hearing site, the administrative law judge declined to reopen the hearing record.

**ISSUE:**

At issue in this matter is whether Mr. McGregory was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

Having heard the testimony and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. McGregory began working for Securitas in December of 2009 as a full-time security officer. On or about May 30, 2010, he was arrested and charged with public intoxication and interference with official acts. He notified the employer of the arrest on June 1. Pursuant to the employer's policy, he was placed on suspension pending resolution of the criminal charges.

Mr. McGregory entered a plea of “not guilty” to the charges. He was notified on June 22 that the charges would be dismissed upon completion of a first-time offender class. He completed the class and, on July 14, 2010, the pending charges were dismissed. He notified the employer of the dismissal on July 15 and returned to work on July 28. The pending criminal charges were the sole reason for the June 1, 2010 suspension.

#### **REASONING AND CONCLUSIONS OF LAW:**

Where an individual is unemployed due to a suspension or disciplinary layoff imposed by the employer, he is considered discharged and the issue of misconduct must be resolved. 871 IAC 24.32(9). An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The representative’s decision disqualified Mr. McGregory on a finding that he had violated a known company rule. The only rule offered by the employer concerns arrests and convictions.

The employer’s rules require that an arrest or conviction be reported within three days. Mr. McGregory was arrested on May 30 and notified the employer of the arrest on June 1. Since his report was within the three days, he was not in violation of the rule. The rule also states that a conviction may result in the termination of employment. Since there was no conviction in this case, Mr. McGregory was not suspended because of a conviction. Because the employer returned him to work after the charges were dismissed, it must be presumed that he did not lose the license that enabled him to work for Securitas.

Mr. McGregory was off work between the time of the arrest and when the charges were dismissed. During this period, the charges were only pending. He had entered a plea of “not guilty” and was, therefore, entitled to the presumption of innocence. The employer’s evidence as a whole failed to establish that Mr. McGregory violated any known company rule or that he was otherwise guilty of misconduct within the meaning of the law. As such, no disqualification is imposed.

#### **DECISION:**

The representative’s decision dated July 8, 2010, reference 03, is hereby reversed. Mr. McGregory was suspended by Securitas but misconduct has not been established. Benefits are allowed, provided he is otherwise eligible.

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Carolyn F. Coleman  
Administrative Law Judge

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Decision Dated and Mailed

cfc/css