

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JOYCE BOLEY
Claimant

LEXINGTON SQUARE LLC
Employer

APPEAL 16A-UI-06967-NM-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/29/16
Claimant: Appellant (2)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Admin. Code r. 871-24.32(1)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from the June 20, 2016 (reference 01) unemployment insurance decision that denied benefits based upon her discharge for conduct not in the best interest of the employer. The parties were properly notified of the hearing. A telephone hearing was held on July 12, 2016. The claimant, Joyce Boley, participated and testified. Also present and participating on behalf of the claimant was her non-attorney representative Brent Howell. The employer, Lexington Square LLC, participated through human resource director Ashely Ruffcorn and human resource assistant Caylie Mueller.

ISSUE:

Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed part time as a certified nurse's assistant from December 18, 2007 until this employment ended on May 26, 2016, when she was discharged.

On May 25, 2016, claimant and her sister, who is also employed by the employer, were arrested. The arrest occurred on claimant's personal time and was not related to her work. The employer has a policy in place which requires individuals to notify the administrator, human resources, or a direct supervisor of an arrest within 24 hours of the arrest. Employees are then placed on unpaid leave until disposition of the charges, at which time the employer makes a determination on the future of employment. Claimant was given a copy of this policy as part of the employee handbook at the time of her hire.

At some point after their arrest claimant's sister reached out to a coworker to ask for advice on whether the two should report what had happened to the employer. Neither claimant nor her sister notified any of the appropriate individuals identified in the policy, though at least some of these individuals had learn about what happened by the end of the day on May 25. On May 26, 2016, claimant and her sister were both called individually into meetings with members of

management. Claimant's sister was suspended without pay at the end of her meeting. At the end of claimant's meeting she was terminated. The employer reported that the difference in treatment was because claimant faced more serious charges than her sister.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes 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 Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984).

In an at-will employment environment an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy but if it fails to meet its burden of proof to establish job-related misconduct as the reason for the separation, it incurs potential liability for unemployment insurance benefits related to that separation. A determination as to whether an employee's act is misconduct does not rest solely on the interpretation or application of the employer's policy or rule. A violation is not necessarily disqualifying misconduct even if the employer was fully within its rights to impose discipline up to or including discharge for the incident under its policy.

Here, the claimant was discharged immediately following an arrest. The crime for which claimant was arrested was not related to her work and did not occur on work time. In order to be disqualified for benefits the employer must show that the misconduct was connected to the claimant's employment. The employer has failed to show any connection between claimant's arrest and her employment. The employer argues that it was actually claimant's failure to notify them of her arrest in accordance with their policies that led to her termination. However, claimant's sister, also an employee, did not follow the proper notification procedure set by the employer and she was not discharged. Since the consequence was more severe for claimant than other employees received for similar conduct, the disparate application of the policy cannot support a disqualification from benefits. Benefits are allowed.

DECISION:

The June 20, 2016 (reference 01) unemployment insurance decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

Nicole Merrill
Administrative Law Judge

Decision Dated and Mailed

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