

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**REBECCA S TOBEN**  
Claimant

**APPEAL NO: 06A-UI-10991-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**LUTHERAN SERVICES IN IOWA INC**  
Employer

**OC: 10/15/06 R: 02**  
**Claimant: Appellant (2)**

Section 96.5-2- a- Discharge

**STATEMENT OF THE CASE:**

Rebecca S. Toben (claimant) appealed a representative's November 8, 2006 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits, and the account of Lutheran Services in Iowa, Inc. (employer) would not be charged because the claimant had been discharged for disqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on November 30, 2006. The claimant participated in the hearing. Belinda Meis and Marty Swanson appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

Did the employer discharge the claimant for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant started working for the employer on June 28, 2005. The claimant worked as a full-time youth specialist. The claimant worked at a facility for youth with significant emotional and behavioral issues. The employer's policy informed employees they were required to promote a positive public image, avoid behavior that violated any of the employer's conflict of interest policies and follow the employee's professional Code of Ethics. The employer further informed employees that participating in an activity that violated federal, state or local law would be considered a potential conflict of interest. The claimant received a copy of the employer's policies.

Since the claimant had a deferred judgment, the employer had to receive permission from the Department of Human Services to hire the claimant. After the claimant began working, the employer had no problems with the claimant and considered her a good employee.

In late September the claimant self-reported that on September 28, 2006, she had been arrested and charged with several felony drug charges. The claimant told the employer she had been arrested when she visited a friend and had no idea this person had any drugs at their

residence. The claimant indicated she was a victim who happened to be at the wrong place at the wrong time. On October 2, 2006, the employer placed the claimant on a paid administrative leave.

In mid-October, the claimant went to court and was formally charged. The claimant pled not guilty to all charges. After the claimant was formally charged, the employer discharged her for violating the employer's ethics and conflict of interest policies. The employer informed the claimant that if she was found innocent of the charges or the charges were dismissed she was eligible to be rehired. The employer discharged the claimant on October 17, 2006, because the pending felony charges undermined her effectiveness at work and the employer needed employees who were role models for the youth at its facility.

As of November 30, 2006, the felony charges against the claimant have been dropped because she accepted a plea agreement. The claimant pled guilty to possession of paraphernalia, a misdemeanor. The claimant established a claim for unemployment insurance benefits during the week of October 15, 2006.

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

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code section 96.5-2-a. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The employer established business reasons for discharging the claimant. The claimant's testimony that she was in the wrong place at the wrong time is credible. The fact the claimant reported her arrest when the employer knew nothing about her arrest or the charges supports the claimant's testimony. The facts do not establish that the claimant intentionally disregarded the employer's interests. The claimant may have used poor judgment with some of the friends she had, but the claimant did not commit work-connected misconduct. As of October 15, 2006, the claimant is qualified to receive unemployment insurance benefits.

**DECISION:**

The representative's November 8, 2006 decision (reference 01) is reversed. The employer established business reasons for discharging the claimant. These reasons do not establish that the claimant committed work-connected misconduct. As of October 15, 2006, the claimant is qualified to receive unemployment insurance benefits, provided she meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/pjs