

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

**PATRICIA CARLSON
1559 WASHINGTON ST
DUBUQUE IA 52001**

**HEARTLAND EMPLOYMENT SERVICES
c/o SHEAKLEY UNISERVICE INC
PO BOX 1160
COLUMBUS OH 43216-1160**

**Appeal Number: 04A-UI-01424-ET
OC: 01-04-04 R: 04
Claimant: Appellant (2)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the February 3, 2004, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on March 2, 2004. The claimant participated in the hearing. Becky Layton, Human Resources Manager, and Denise Schiltz, Administrator/Director of Nursing, participated in the hearing on behalf of the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time CNA for Heartland Employment Services from March 6, 2003 to December 22, 2003. In August 2003 the claimant and her husband had an argument at a local casino and the claimant grabbed her husband's shoulder and said, "We're going home," and was subsequently arrested for domestic abuse. The employer saw an article in the newspaper about the claimant's arrest. The human resources manager called the police department to inquire about the situation and was told they would not provide that information until legal proceedings were complete in the case. The claimant told Denise Schiltz, Administrator/DON about the incident and Ms. Schiltz told her not to worry about it. The employer called the police in October and again in December to find out if the charge had been resolved. In December it was told the claimant pleaded guilty to disorderly conduct November 25, 2003. The claimant's attorney appeared in court on her behalf without the claimant present November 25, 2004, and the claimant received the paperwork on the plea shortly before Christmas. The employer terminated the claimant's employment December 22, 2003, because it could not employ her with a "violent" offense on her record. The employer's policy states that employees can "not have an arrest, indictment, conviction or guilty plea to a crime which impairs an employee's suitability or ability to work for the company."

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the 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 proving disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The claimant entered a guilty plea to a charge of disorderly conduct. While the employer's policy states that even an arrest for a "crime which impairs an employee's suitability or ability to work for the company" will result in suspension subject to termination for the first offense, an arrest does not constitute guilt and the employer has not demonstrated that the claimant's plea to disorderly conduct actually affected her "suitability or ability to work for the company." This charge was not work-related and there is no evidence that the claimant's performance did not meet the employer's expectations. Consequently, the administrative law judge concludes the employer has not met its burden of proving disqualifying job misconduct. Benefits are allowed.

DECISION:

The February 3, 2004, reference 01, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

je/b