

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ZINA OLSON
Claimant

TENCO INDUSTRIES INC
Employer

APPEAL 18A-UI-04468-LJ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 02/25/18
Claimant: Respondent (1R)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

STATEMENT OF THE CASE:

The employer filed an appeal from the April 2, 2018, (reference 01) unemployment insurance decision that allowed benefits based upon a determination that claimant was discharged and the employer did not establish the discharge was for willful or deliberate misconduct. The parties were properly notified of the hearing. A telephone hearing was held on May 4, 2018. The claimant, Zina Olson, registered a telephone number but was not available when called for the hearing. The employer, Tenco Industries, Inc., participated through Angela Lennie, Human Resources Director. Employer's Exhibits 1 through 9 was received and admitted into the record. The administrative law judge took official notice of the administrative record.

ISSUES:

Was the claimant discharged for disqualifying job-related misconduct?
Has the claimant been overpaid unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?
Can charges to the employer's account be waived?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed part-time, most recently as a direct support professional, from July 27, 2017, until February 2, 2018, when she was suspended without pay. On February 2, 2018, Lennie learned that claimant had been arrested the night before for writing bad checks. Lennie explained that the employer is in the business of caring for individuals with disabilities, thus it must comply with a number of state and federal laws and regulations regarding its employees. The employer's policy upon an employee's arrest is to immediately suspend the individual pending the outcome of the criminal matter. Once the criminal matter has concluded, the employer works with the employee to see if the employee can be approved by DHS to return to work. Claimant's criminal charges were dismissed on March 20, and the employer worked with her to return to work. Ultimately, claimant ceased communicating with the employer so the employer discharged her effective April 12, 2018.

The administrative record reflects that claimant has received unemployment benefits in the amount of \$1,224.00, since filing a claim with an effective date of February 25, 2018, for the nine weeks ending April 28, 2018. The administrative record also establishes that the employer did participate in the fact-finding interview. Lennie personally participated in the fact-finding interview.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was suspended for no disqualifying reason. Benefits are withheld.

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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

Iowa Admin. Code r. 871-24.32(9) provides:

(9) Suspension or disciplinary layoff. Whenever a claim is filed and the reason for the claimant's unemployment is the result of a disciplinary layoff or suspension imposed by the employer, the claimant is considered as discharged, and the issue of misconduct

must be resolved. Alleged misconduct or dishonesty without corroboration is not sufficient to result in disqualification.

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. In this case, the employer suspended claimant once it learned that she had been arrested. It does not appear that the employer suspended her due to the nature of her criminal charge or any specific concerns related to the employment. Rather, it simply followed its standard policy and suspended her pending the outcome of the criminal issue. This is not disqualifying misconduct. The employer has not met its burden of proof to establish that claimant was separated for disqualifying, job-related misconduct. Benefits are allowed effective February 2, 2018, the date that claimant was suspended. Claimant was subsequently given the opportunity to return to work. She stopped communicating with the employer and never returned. This matter shall be remanded for further investigation of that issue.

DECISION:

The April 2, 2018, (reference 01) unemployment insurance decision is affirmed. Claimant was discharged from employment for no disqualifying reason on February 2, 2018. Benefits are allowed, provided she is otherwise eligible.

REMAND:

The issue of whether claimant's April 12, 2018, separation from employment is disqualifying is remanded to the Benefits Bureau of Iowa Workforce Development for initial investigation and determination.

Elizabeth A. Johnson
Administrative Law Judge

Decision Dated and Mailed

lj/scn