

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

KRISTINIA A MANASIL
Claimant

HY-VEE INC
Employer

APPEAL 14A-UI-11755-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 10/05/14
Claimant: Respondent (1)

Iowa Code § 96.5(2)a – Disciplinary Suspension/Misconduct

STATEMENT OF THE CASE:

The employer filed an appeal from the November 4, 2014, (reference 01) unemployment insurance decision that allowed benefits based. The parties were properly notified about the hearing. A telephone hearing was held on December 4, 2014. Claimant participated. Employer participated through J.J. Hesnard, Store Director and Kristin Klingenberg, Director of Store Operation and was represented by Bruce Burgess of Corporate Cost Control, Inc. Employer's Exhibits One through Five were entered and received into the record.

ISSUE:

Has the claimant been suspended due to job-connected misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a second assistant manager November 18, 2013 beginning through date of hearing as she remains employed. Around April 17 the claimant and another individual were charged with arson in connection with a fire at a business she used to own. The claimant has pled not guilty and the matter has not yet been resolved. The claimant was suspended by store director until she is cleared of all charges. The claimant was hired after the fire had occurred and disclosed to the employer during the hiring process that she was under investigation for arson.

At the same store where the claimant works another employee has been charged with vehicular manslaughter as a result of a death that occurred after an accident where he was the driver of the automobile. That same employee has driving under the influence charges pending against him.

The employer suspended the claimant to protect their reputation in the community, but is allowing another employee with similar criminal charges to continue working.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was suspended from employment for no disqualifying reason.

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(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.

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating [suspending] claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. IDJS*, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination [suspension] of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988). Misconduct serious enough to warrant discharge [suspension] is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Employment Appeal Board*, 423 N.W.2d 211 (Iowa App. 1988).

The employer has two employees both facing serious criminal charges. One has been suspended, one has not. Neither is facing charges for acts that occurred on work time, and in fact this claimant was not even an employee of Hy-Vee when her alleged criminal act took place. The claimant disclosed to the employer her situation at the time of her hire. Under these circumstances the administrative law judge cannot conclude that the claimant was suspended due to work connected misconduct. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The November 4, 2014, reference 01, decision is affirmed. Claimant was suspended from employment without establishment of misconduct. Benefits are allowed, provided claimant is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/css