

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KIPP S WHEATLEY
Claimant

APPEAL NO. 11A-UI-08943-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

**OC: 05/22/11
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated June 24, 2011, reference 01, that concluded he was suspended for misconduct. A telephone hearing was held on July 28, 2011. The parties were properly notified about the hearing. The claimant participated in the hearing. Alice Rose Thatch participated in the hearing on behalf of the employer with a witness, Jason Van Vactor.

ISSUE:

Was the claimant suspended and discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked full time for the employer as a meat clerk from September 12, 2006, to February 16, 2011. He was informed and understood that under the employer's work rules, he could be suspended and discharged for off-duty criminal offenses.

On February 16, 2011, the claimant was arrested and escorted out of the store by law enforcement officials during his work shift. He was jailed and charged with felony possession of methamphetamine precursors (ingredients used in manufacturing methamphetamine such as cold medicines containing ephedrine). There was publicity in the community regarding the claimant's arrest because several other persons in the area were arrested at the same time and charged with similar offenses. The persons arrested were portrayed as part of a "meth ring" to manufacture and sell methamphetamines.

Based on the employer's policy, the claimant was suspended due to the criminal offense. On about June 15, claimant notified the store manager that he intended to plead guilty to a lesser offense. The store manager told him to let him know the outcome of the case. The claimant ended up pleading guilty to a misdemeanor offense of possessing over the legal limit of ephedrine. In exchange, the felony charges were dropped. He was required to serve a ten-day jail sentence in June 2011 on the misdemeanor conviction.

After the claimant was released from jail on June 26, 2011, he contacted the store manager on July 1 to see about getting his job back. The store manager informed him that he was discharged due to his criminal conduct and the negative publicity surrounding the case.

The claimant filed a new claim for unemployment insurance benefits effective May 22, 2011, while he was still under suspension and continued to file weekly claims up to and after his discharge.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was suspended and discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

871 IAC 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.

The Iowa Supreme Court has ruled that off-duty misconduct may constitute work connected misconduct under the unemployment insurance law if the conduct deliberately violates the employer's work rules. Kleidosty v. Employment Appeal Board, 482 N.W.2d 416, 418 (Iowa 1992). The Kleidosty case involves similar facts to this case in that the claimant Kleidosty violated the employer's work rules prohibiting off-duty illegal conduct.

The fact that the claimant ended up pleading guilty to some lesser conduct does not change matters. He committed illegal conduct outside of work in violation of the employer work rules. He was initially suspended and then was discharged. Both the suspension and discharge were due to the illegal conduct which harmed the employer's interest due to the negative publicity surrounding the situation, which amounts to work-connected misconduct under the statute, rule, and case law.

DECISION:

The unemployment insurance decision dated June 24, 2011, reference 01, is affirmed. The claimant is disqualified from receiving unemployment insurance benefits until he has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/css