

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**CORDARRELL D SMITH**  
Claimant

**HY-VEE INC**  
Employer

**APPEAL 17A-UI-07438-LJ-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 06/18/17**  
**Claimant: Appellant (2)**

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Iowa Code § 96.5(2)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the July 11, 2017 (reference 01) unemployment insurance decision that denied benefits based upon a determination that claimant was placed on a disciplinary suspension. The parties were properly notified of the hearing. A telephone hearing was held on August 9, 2017. The claimant, Cordarrell D. Smith, participated. The employer, Hy-Vee, Inc., participated through Rich Sherer, Store Director; and Keith Mokler of Corporate Cost Control, Inc., represented the employer. Employer's Exhibits 1, 2, and 3 were received and admitted into the record without objection. The administrative law judge took official notice of *State v. Williams*, No. 14-0793, \_\_ N.W.2d \_\_ (Iowa May 25, 2017).

**ISSUE:**

Was the claimant discharged for disqualifying job-related misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time, most recently as a meat clerk, from July 14, 2016 until May 31, 2017, when he was placed on a disciplinary suspension. Shortly before claimant's suspension, the Iowa Supreme Court ruled that revived the criminal charges brought against claimant, including sexual abuse, kidnapping, and conspiracy to commit a felony. These charges stem from an incident that occurred on June 10, 2012, in Waterloo, Iowa. In connection with this ruling, the Courier newspaper posted a photograph of claimant on its website along with the headline, "Gang Rape Case Back On After Iowa Supreme Court Ruling." The employer employs minors and females, and it felt it could no longer employ someone charged with the crimes claimant has been charged with. Additionally, claimant's picture was published along with a description of the crimes he has been charged with, and the employer felt this creates "multiple layers of conflict."

The employer has placed claimant on a disciplinary suspension and has not discharged him. If claimant is found not guilty of the charges against him, he will be allowed to return to work. If claimant is found guilty, the employer will discharge him. Claimant testified that he did not engage in the conduct underlying the criminal charges. The employer admits that claimant was

employed with its company previously when these charges originated. Claimant's employment ended at some point after the charges were brought, and he was subsequently re-employed.

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

For the reasons that follow, the administrative law judge concludes claimant has been suspended for no disqualifying reason. Benefits are allowed, provided claimant is otherwise eligible.

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. A violation is not necessarily disqualifying misconduct even if the employer was fully within its rights to impose discipline up to or including discharge for the incident under its policy.

Here, the employer has not established that claimant engaged in disqualifying misconduct. It appears that the employer chose to place claimant on an indefinite disciplinary suspension after the Iowa Supreme Court revived the criminal charges against claimant and the local newspaper publicized the decision. Claimant had no control over either of these events. The employer has not provided any proof (nor could it, reasonably) that claimant engaged in the conduct that led to the criminal charges, and claimant maintains his innocence. As the employer has not met its burden of establishing that claimant was discharged for disqualifying job-related misconduct, benefits are allowed.

**DECISION:**

The July 11, 2017 (reference 01) unemployment insurance decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

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Elizabeth A. Johnson  
Administrative Law Judge

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Decision Dated and Mailed

lj/scn