

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROSE AMES

Claimant

APPEAL NO: 15A-UI-04405-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

GOOD SAMARITAN SOCIETY INC

Employer

OC: 12/21/14

Claimant: Appellant (2)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the April 8, 2015, reference 03, decision that denied benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on May 19, 2015. The claimant participated in the hearing. Kyla Yates, Human Resources Director and Carol Wilburn, Administrator, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was hired as a full-time CNA for Good Samaritan Society January 7, 2013. On December 12, 2014, the claimant was visiting at the facility and received a phone call from the county sheriff notifying her she was going to be arrested on forgery and theft charges. She informed the employer of the situation and was arrested and incarcerated for one week. She is now awaiting trial on the criminal charges.

The employer decided to place the claimant on a general leave until it learned the outcome of her trial. The employer's clients are frail and elderly and have all of their belonging with them at the facility, including cash, check books, jewelry and electronics, many items of great emotional and/or financial value to the residents. Because of the forgery and theft charges against the claimant, the employer decided it could not continue her employment until her case was adjudicated. If she is found not guilty, she will be allowed to return to work.

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 § 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).

The employer has the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

The claimant was charged with theft and forgery. Due to the nature of the employer's business, it is incumbent upon it to protect the residents' physical, emotional and financial health. Because of the claimant's charges, the employer reasonably believed it could not continue to schedule the claimant with those particular charges pending.

The issue, however, is whether the claimant's criminal charges constitute work-connected misconduct. The administrative law judge must conclude it does not. While the claimant was charged with theft and forgery and the employer's decision to place her on a general leave to insure its residents are protected is understandable, the claimant does not stand accused of any

work-related misconduct. There are no allegations she stole anything from residents or any evidence that she failed to perform her job in a satisfactory and honorable fashion. Consequently, the employer has not met its burden of proving disqualifying job misconduct as that term is defined by Iowa law. Therefore, benefits are allowed.

DECISION:

The April 8, 2015, reference 03, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs