

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ARACELI RIOS**

Claimant

**APPEAL NO: 12A-UI-07334-S2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**DALLAS COUNTY HOSPITAL**

Employer

**OC: 05/27/12**

**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Dallas County Hospital (employer) appealed a representative's June 14, 2012 decision (reference 01) that concluded Araceli Rios (claimant) was discharged and there was no evidence of willful or deliberate misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for July 5, 2012. The claimant participated personally. The employer participated by Sherry Smith, human resources manager, and Amy Piepmeier, compliance manager.

**ISSUE:**

The issue is whether the claimant was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was hired on April 23, 2010, as a full-time registration representative/interpreter. The claimant signed for receipt of the employer's handbook. The employer did not issue the claimant any warnings during her employment.

On February 28, 2012, the claimant was arrested for driving under suspension and possession of drug paraphernalia. The claimant was not performing any work activity when the arrest occurred. The employer suspended the claimant on March 1, 2012, for violation of the employer's policy that indicates a person who is charged with a crime must be suspended. On May 29, 2012, the employer terminated the claimant under the employer's policy that indicates a person shall be terminated if after 90-days there is no disposition of the criminal case.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was not discharged for misconduct.

Iowa Code section 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.

871 IAC 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.

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). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). The employer did not provide sufficient evidence of **job-related** misconduct. The employer did not meet its burden of proof to show misconduct. Benefits are allowed.

#### DECISION:

The representative's June 14, 2012 decision (reference 01) is affirmed. The employer has not met its burden of proof to establish job-related misconduct. Benefits are allowed.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

bas/kjw