

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**TRAVIS L MCDONNELL**  
Claimant

**APPEAL NO. 14A-UI-03851-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**FAREWAY STORES INC**  
Employer

**OC: 03/09/14**  
**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge  
871 IAC 24.32(9) – Disciplinary Suspension

**STATEMENT OF THE CASE:**

Fareway Stores, Inc. filed a timely appeal from a representative's decision dated April 9, 2014, reference 01, which held claimant eligible to receive unemployment insurance benefits. After due notice was provided, a telephone hearing was held on April 30, 2014. Although the claimant was duly notified, he did not participate. The employer participated by Ms. Maggie Worrall, Training/Development Specialist and Mike Trotter, Market Manager. Employer's Exhibits A, B, and C were received into evidence.

**ISSUE:**

The issue is whether the claimant was discharged or received a disciplinary suspension for misconduct sufficient to warrant the denial of unemployment insurance benefits.

**FINDINGS OF FACT:**

Having considered the evidence in the record, the administrative law judge finds: Travis McDonnell began employment with Fareway Stores, Inc. on October 21, 2013. Mr. McDonnell was hired to work as a part-time market clerk and was paid by the hour. His immediate supervisor was the market manager, Mike Trotter. Mr. McDonnell's last day on the job was March 14, 2014. On that date Mr. McDonnell was suspended from work without pay pending resolution of criminal charges pending against him. The employer became aware that Mr. McDonnell had been arrested and had been charged with domestic assault based upon an incident that had taken place in the early morning hours of March 6, 2014 when Mr. McDonnell was off work and not performing services for the company.

Company policy requires employees to "self-report" to their supervisors if they are arrested, charged or convicted for any criminal offense except minor traffic offenses. Under the policy company employees are also required to submit a police report or other documentation.

When Mr. McDonnell next reported to work after the March 6 incident he was questioned about the matter shortly after reporting for work that day by Mr. Trotter, the market manager, and Mr. Trotter requested a statement from the claimant about the incident.

In the statement provided by Mr. McDonnell the claimant described the incident contending that he was acting in self-defense. The claimant also stated that he had been arrested because his former girlfriend had alleged to police that Mr. McDonnell had placed his forearm on her chest making it difficult for her to breathe. Although Mr. McDonnell has stated that the other individual was the aggressor and that he was placed in the position of defending himself from assault, the employer after considering the matter placed the claimant on an open-ended disciplinary suspension pending a resolution of the matter in court. The company believed that the allegation that the claimant had restricted the other person's airway made the claimant's conduct more serious and that his outside employment activities could negatively impact the company's reputation in the community in violation of the company's "outside activities" policy. Mr. McDonnell was informed that if he is convicted of the charges, he will be discharged from employment and if he is not convicted, he will be reinstated.

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

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.

Under the provisions of the Employment Security Law and 871 IAC 24.32(9), disciplinary suspensions imposed by an employer are considered to be a discharge for the purposes of the law. 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 imposing a disciplinary suspension or separating the claimant, but whether the claimant is entitled to unemployment insurance benefits. What misconduct justifies termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. Pierce v. Iowa Department of Job Service, 425 N.W.2d 679 (Iowa App. 1988). Misconduct that may be serious enough to warrant the discharge of an employee may not necessarily be serious enough to warrant the denial of unemployment insurance benefits. Such misconduct must be "substantial" and must have a reasonable nexus or connection with the employment. The Supreme Court in the case of Kleidosty v. Employment Appeal Board, 482 N.W.2d 416, 418 (Iowa 1992) held that even off duty conduct could constitute misconduct providing the employer had a specific rule prohibiting immoral or illegal conduct. In the case at hand Fareway Stores has a similar policy that prohibits outside conduct that negatively impacts the employee's job performance, conflicts with the obligation of the company or impacts the company's reputation in the community. In Kleidosty, the worker was convicted of selling cocaine away from the employer's premises and it appears that the notoriety of the offense was a factor. In this case, Mr. McDonnell had been arrested on an allegation made by a former girlfriend that the claimant had been assaultive during an early morning hour between the two. There has been no showing that the notoriety involving Mr. McDonnell's arrest or the effect upon the employer was the same or similar as in the Kleidosty case.

Most importantly, Mr. McDonnell's guilt or innocence in the matter has not been established. The claimant informed his market manager that he has denied the charges against him and asserted in the statement he provided that he had not been the aggressor but only had attempted to defend himself during the late night incident. Based upon the evidence in the record at the time of the hearing in this matter, the administrative law judge concludes that the evidence in the record does not establish misconduct in connection with the work sufficient to deny the receipt of unemployment insurance benefits. The claimant has been disciplinarily suspended from work without pay for an incident that took place away from the employer's premises during non working hours. Claimant has denied any wrongdoing and has pled not guilty to the charges.

Iowa Code section 96.5-2-b and c provides: Claimant's wage credits earned prior to the date of discharge may be cancelled if the claimant is discharged for an act constituting an indictable offense, providing the claimant has been convicted of the offense, or has admitted in writing to committing the act. In the case at hand, Mr. McDonnell has pled not guilty to the charges against him. The claimant has not been convicted of the offense and has not admitted being guilty of the charges brought against him.

For the above-stated reasons the administrative law judge concludes that the evidence in the record does not establish disqualifying misconduct on the part of the claimant at this time. Under the provisions of the Employment Security Law, an unemployment insurance case may be re-determined within five years of the original claim date if a claimant has later been convicted or has later pled guilty to an indictable offense. The employer has the option of requesting re-determination in this matter within the specified period if the claimant is convicted and the employer believes further supports their position that there was a sufficient nexus or connection between the claimant's off duty conduct and his employment with Fareway Stores, Inc.

**DECISION:**

The representative's decision dated April 9, 2014, reference 01, is affirmed. The claimant was separated from non disqualifying conditions. Unemployment insurance benefits are allowed, provided the claimant meets all other eligibility requirements of Iowa law.

---

Terence P. Nice  
Administrative Law Judge

---

Decision Dated and Mailed

pjs/pjs