

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KIMBERLY D SCHLEIGER**  
Claimant

**APPEAL NO. 07A-UI-03493-CT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**GOOD SAMARITAN SOCIETY INC**  
Employer

**OC: 03/04/07 R: 03**  
**Claimant: Appellant (2)**

Section 96.5(2)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Kimberly Schleiger filed an appeal from a representative's decision dated March 28, 2007, reference 01, which denied benefits based on her separation from Good Samaritan Society, Inc. After due notice was issued, a hearing was held by telephone on April 19, 2007. Ms. Schleiger participated personally. The employer participated by Fred Metcalf, Human Resources Associate.

**ISSUE:**

At issue in this matter is whether Ms. Schleiger was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Schleiger was employed by Good Samaritan Society, Inc. from December 3, 2002 until March 10, 2007. She worked approximately 30 hours each week as a certified nursing assistant. She was discharged after she was charged with assault away from the workplace. She did not miss any time from work as a result of the arrest. The employer considered her conduct to be in violation of its policy that prohibits indecent conduct that might reflect negatively on the facility.

The incident that brought about the arrest occurred at a school. The person in the car behind her was honking and yelling and Ms. Schleiger got out of her car to determine the problem. The other driver was angry and began pushing her. Ms. Schleiger put her hands up in defense and then shoved her back. She initially entered a plea of not guilty. A plea arrangement was made whereby she would plead guilty to simple assault, pay a fine, and receive a deferred judgment. The above matter was the sole reason for Ms. Schleiger's discharge on March 10, 2007. She had not been disciplined for any matters during the course of her employment.

**REASONING AND CONCLUSIONS OF LAW:**

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Ms. Schleiger was discharged because she was arrested. The conduct that brought about the arrest did not occur on work property and did not involve any coworkers. Ms. Schleiger was not the instigator of the altercation on March 5.

The evidence establishes that Ms. Schleiger's arrest was caused by a minor shoving match with another individual. A reasonable person would not conclude that such an incident constituted indecent conduct prohibited by the employer's policy. Although Ms. Schleiger may have used poor judgment in getting out of her vehicle in the first place, the fact remains that her actions did not constitute a deliberate and intentional disregard of the employer's standards or interests. While the employer may have had good cause to discharge, conduct that might warrant a discharge from employment will not necessarily support a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa 1983). For the reasons stated herein, benefits are allowed.

**DECISION:**

The representative's decision dated March 28, 2007, reference 01, is hereby reversed. Ms. Schleiger was discharged but misconduct in connection with the employment has not been established. Benefits are allowed, provided she satisfies all other conditions of eligibility.

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Carolyn F. Coleman  
Administrative Law Judge

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Decision Dated and Mailed

cfc/pjs