

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

NICHOLAS L ROHLF
Claimant

HOPE HAVEN INC
Employer

APPEAL 14A-UI-04514-LT
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/06/14
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the April 28, 2014, (reference 01) unemployment insurance decision that denied benefits based upon a discharge from employment. The parties were properly notified about the hearing. A telephone hearing was held on May 20, 2014. Claimant participated. Claimant's witness Mike Halma was not available at the number provided and there was no voice mail option. Employer participated through director of residential services Leann Blau.

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 part time as a residential instructor and was separated from employment on March 27, 2014. Claimant was suspended on January 8, pending an investigation into his alleged conduct on January 2, 2014, after the parent of a child complained he had been using client money for snacks, slept in the same bed at group respite, and he did not report that the child attempted to shoplift. On January 13 the investigation was completed and the employer determined no concerns so claimant returned to work with adult clients in group settings in the presence of a supervisor so he was not working alone. On March 27, the employer terminated the claimant's employment because it received a letter from the Iowa Department of Human Services (DHS) informing the employer that the claimant could no longer work at the employer's facility based on a record check evaluation.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge (ALJ) concludes the claimant was not discharged for work-connected misconduct.

The Iowa Code includes a number of chapters¹ which require the termination of an employee based on a record check evaluation performed by the Department of Human Services (DHS). Based on its evaluation, DHS has the sole authority under the Code to determine whether the employee can remain in the job. A record check evaluation includes a review of criminal records and founded abuse information in the child abuse registry², the dependent adult abuse registry³ or both. The Code requires abuse information from the registries to be kept confidential and prohibits re-dissemination of that information.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5(2)a. The rules define misconduct as deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. Iowa Admin. Code r. 871-24.32(1).

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). Whether the discharge was warranted 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. Emp't Appeal Bd.*, 616 N.W.2d 661, 665 (Iowa 2000).

The administrative law judge understands both parties are in an untenable situation because they are prohibited by law from presenting some evidence to support their respective positions on the separation issue. However, the employer has the burden of proof in discharge cases. While the employer may have been justified in terminating the claimant, work-connected misconduct as defined by the unemployment insurance law has not been established. No willful misconduct or repeated negligence has been proven in this case.

DECISION:

The unemployment insurance decision dated April 28, 2014, (reference 01) is reversed. The claimant is qualified to receive unemployment insurance benefits, provided he is otherwise eligible.

Dévon M. Lewis
Administrative Law Judge

¹ See, e.g., Iowa Code chapters 135C, 135H, 237A

² Iowa Code §235A.14

³ Iowa Code §235B.5

Decision Dated and Mailed

dml/css

NOTE TO EMPLOYER:

If you wish to change the address of record to the PO Box, please access your account at:
<https://www.myiowauui.org/UITIPTaxWeb/>.

Helpful information about using this site may be found at:

<http://www.iowaworkforce.org/ui/uiemployers.htm> and

http://www.youtube.com/watch?v=_mpCM8FGQoY