

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KAREN S HIMES

Claimant

APPEAL NO. 12O-UI-05869-NT

**ADMINISTRATIVE LAW JUDGE
AMENDED DECISION**

GOOD SAMARITAN SOCIETY INC

Employer

OC: 01/29/12

Claimant: Respondent (1)

Section 96.5-2-a – Discharge for Misconduct
Section 96.3-7 – Benefit Overpayment

STATEMENT OF THE CASE:

Employer filed a timely appeal from a May 8, 2012, reference 01, decision that allowed benefits. A hearing was held on April 3, 2012. The claimant participated. The employer did not participate. On April 4, 2012 the administrative law judge issued a decision affirming the fact-finder's decision that the claimant was discharged for no disqualifying reason. The matter was appealed to the Employment Appeal Board. On May 18, 2012 the matter was remanded for a new hearing as it was determined that the employer had not received notice of the initial hearing. On June 11, 2012 a telephone hearing was conducted after due notice was provided. The claimant participated. Participating as a witness for the claimant was Kendra Himes. The employer participated by Anne Johnston, Administrator.

ISSUE:

The issue in this matter is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Karen Himes was employed by Good Samaritan Society from 1990 until she last performed work for the employer on December 27, 2011. The claimant was employed as a full-time dietary supervisor. Her immediate supervisor was the administrator, Anne Johnston.

After the claimant worked on December 27, 2011, she was injured in a non-work-related incident. The claimant was excused by her physician from returning to work for two weeks. A medical statement to that effect was faxed to the employer.

On December 30, 2011 the claimant was arrested and charged with conspiracy to manufacture methamphetamine, a Class B felony. The claimant remained incarcerated until January 9, 2012 when she was released pending trial. From the time that the claimant had been incarcerated the claimant's daughter had informed the employer of her incarceration. On January 10, the

claimant personally contacted Ms. Johnston to inform her that she had been released from jail and inquired as to whether she was eligible to return to work. It was agreed that the parties would meet on January 12.

When the parties met on January 12 the administrator had the claimant's personal effects ready for removal by the claimant and paperwork had been prepared for the claimant's job separation. Although the claimant was told that she had been placed on a "leave of absence" the claimant believed based upon other information that was provided to her that she was being discharged from employment. Under the terms of the "leave of absence" the claimant was not guaranteed a position on her return after charges were dropped and the terms of the agreement apparently did not list any date for the leave of absence to end specifically. The evidence does not establish that the claimant had requested or agreed to a "leave of absence."

At the time that the claimant was provided the "leave of absence" she also was required to sign a corrective action document and the employer removed the claimant's keys in conjunction with providing the claimant her personal possessions.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes job-related misconduct sufficient to warrant the denial of unemployment insurance benefits. It does not.

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 this matter. See Iowa Code section 96.6-2. Misconduct must be substantial in order to justify a denial of unemployment insurance benefits. Conduct serious enough to warrant the discharge of an employee may not necessarily be serious enough to warrant the denial of unemployment insurance benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, work related or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

In this matter the evidence establishes that Ms. Himes did not miss work because of incarceration. The claimant had been authorized to be absent by her physician for medical reasons and reported back to the employer without exceeding the authorized time away from work that had been determined by her physician. On January 12, Ms. Himes met with the facility's administrator. At that time the administrator had the claimant's personal effects packed and placed by the door. Termination paperwork had been prepared for the claimant to sign during the meeting. The claimant was told that she was being placed on an indefinite "leave of absence" until her legal matters had been resolved. The claimant had not agreed to the leave of absence and the documentation indicated that the claimant was in fact being separated from employment. The employer had the claimant turn in her keys and badge and provided the claimant her personal effects leaving the claimant to the reasonable conclusion that she was being discharged from employment.

Under Iowa Administrative Code rule 871 IAC 24.32(9) a suspension or disciplinary layoff is considered to be a discharge.

The evidence in the record establishes that the claimant's absences fell within the two-week period covered by the medical excuse that had been provided to the employer by Ms. Himes' doctor at the end of December 2011.

While past acts and warnings can be used to determine the magnitude of a current act of misconduct a discharge for misconduct cannot be based upon past acts. The termination from employment must be based upon a current act. See 871 IAC 24.32(8). In determining whether the conduct that prompted the discharge constituted a current act the administrative law judge considers the date on which the conduct came to the attention of the employer and the date in which the employer notified the claimant that the conduct subjected the claimant to discharge. See Greene v. Emp't Appeal Bd., 426 N.W.2d 659, 662 (Iowa Ct. App. 1988).

The administrative law judge finds the claimant was not discharged for a current of misconduct. The law also requires that there be a nexus or connection between the claimant's off-duty conduct and her employment in order to constitute disqualifying job misconduct. The evidence in the record does not establish that the claimant's arrest for a non-work-related reason violated a specific work rule with Good Samaritan Society. In the absence of a specific policy making the claimant's conduct that was off duty and non-work-related a work rule whose violation could result in termination from employment, the administrative law judge concludes that the employer has not sustained its burden of proof in establishing disqualifying job misconduct.

The question before the administrative law judge is not whether the employer has a right to discharge an employee for this reason but whether the discharge is disqualifying under the provision of the Employment Security Law. While the decision to terminate Ms. Himes may

have been a sound decision from a management viewpoint, for the above-stated reasons the administrative law judge concludes that the claimant was discharged for no disqualifying reason.

AMENDED DECISION:

The representative's decision dated May 8, 2012, reference 01, is affirmed. The claimant was discharged for no disqualifying reason. Unemployment insurance benefits are allowed, providing the claimant meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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