

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ANDREW R HOLLEMLBAEK
Claimant

APPEAL 18A-UI-10534-AW-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

EASY STREET PROPERTY INVESTMENTS
Employer

**OC: 06/03/18
Claimant: Appellant (2)**

Iowa Code § 96.5(2) – Discharge for Misconduct
Iowa Admin r. 871-24.32 – Discharge for Misconduct

STATEMENT OF THE CASE:

Andrew Hollemlbaek, Claimant, filed an appeal from the October 12, 2018 (reference 02) unemployment insurance decision that denied benefits because he was discharged from work with Easy Street Property Investments due to conduct not in the best interests of the employer. The parties were properly notified of the hearing. A telephone hearing was held on November 6, 2018 at 1:00 p.m. Claimant participated. Employer did not participate. No exhibits were admitted.

ISSUE:

Whether claimant's separation was a discharge due to disqualifying job-related misconduct.

FINDINGS OF FACT:

As claimant was the only witness, the administrative law judge makes the following findings of fact based solely upon claimant's testimony: Claimant was employed full-time as a Project Manager from July 9, 2018 until his employment with Easy Street Property Investments ended on September 6, 2018. On September 5, 2018, claimant was arrested on criminal charges. Claimant spent the night in jail and was released the following morning. Upon release, claimant called employer and was told that claimant's arrest did not look good for the company and claimant was being discharged from employment. Employer does not have a policy regarding criminal charges or arrests. Claimant received no prior warnings for any type of misconduct and had no reason to believe that his job was in jeopardy. The criminal charges stemmed from an incident after work hours and were not related to his work.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged for no disqualifying reason. Benefits are allowed, provided claimant is otherwise eligible.

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 disqualification shall continue 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:

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 of misconduct has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Reigelsberger v. Emp't Appeal Bd.*, 500 N.W.2d 64, 66 (Iowa 1993); accord *Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661, 665 (Iowa 2000).

Further, the employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). A determination as to whether an employee's act is misconduct does not rest solely on the interpretation or application of the employer's policy or rule. A violation is not necessarily disqualifying misconduct even if the employer was fully within its rights to impose discipline up to or including discharge for the incident under its policy. The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988).

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 Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Bd.*, 616 N.W.2d 661 (Iowa 2000).

Claimant's criminal charge and arrest are an accusation of misconduct – not misconduct itself. Furthermore, the criminal charges and arrest were not work-related. Employer has failed to meet its burden of proving disqualifying, job-related misconduct. Claimant was discharged for no disqualifying reason. Benefits are allowed provided claimant is otherwise eligible.

DECISION:

The October 12, 2018 (reference 02) unemployment insurance decision is reversed. Benefits are allowed provided claimant is otherwise eligible.

Adrienne C. Williamson
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Decision Dated and Mailed

acw/rvs