

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MARIO J HUGHES
Claimant

MERCY HEALTH SERVICES-IOWA CORP
Employer

APPEAL 19A-UI-01017-NM-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 12/30/18
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the January 29, 2019, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on February 20, 2019. Claimant participated and testified. Claimant's mother, and legal guardian, Barbara Germundson, participated as his non-attorney representative and testified. Employer did not participate.

ISSUE:

Was the claimant suspended for reasons related to job misconduct sufficient to warrant a denial of unemployment benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on September 17, 2014. Claimant last worked as a part-time nutritional services employee. Claimant was temporarily separated from employment on December 17, 2018, when he was suspended pending the outcome of criminal domestic abuse assault charges. The claimant has pled not guilty to those charges. Claimant was not given an explanation as to why he was suspended for an alleged incident that occurred outside of work. No evidence was provided that the employer has policies or procedures in place for suspensions related to criminal charges occurring outside of work. Claimant was not aware that his alleged conduct outside of work could result in his suspension from employment.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was suspended from employment for no disqualifying reason.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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:

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. This rule is intended to implement Iowa Code section 96.5 and Supreme Court of Iowa decision, *Sheryl A. Cospers vs. Iowa Department of Job Service and Blue Cross of Iowa*.

Although the claimant described the separation as an involuntary leave of absence rather than a disciplinary suspension, it is, in effect, a removal from work because of alleged behavior employer is unwilling to tolerate of an employee. Thus, the separation is treated as a disciplinary suspension, which may be semantically equivalent to a disciplinary leave of absence. The employer has the burden of proof in establishing disqualifying job misconduct. *Cospers v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). 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.”

Under the definition of misconduct for purposes of unemployment benefit disqualification, the conduct in question must be “work-connected.” *Diggs v. Emp’t Appeal Bd.*, 478 N.W.2d 432 (Iowa Ct. App. 1991). The court has concluded that some off-duty conduct can have the requisite element of work connection. *Kleidosty v. Emp’t Appeal Bd.*, 482 N.W.2d 416, 418 (Iowa 1992). Under similar definitions of misconduct, for an employer to show that the employee’s off-duty activities rise to the level of misconduct in connection with the employment, the employer must show by a preponderance of the evidence that the employee’s conduct (1) had some nexus with the work; (2) resulted in some harm to the employer’s interest, and (3) was conduct which was (a) violative of some code of behavior impliedly contracted between employer and employee, and (b) done with intent or knowledge that the employer’s interest would suffer. See also, *Dray v. Director*, 930 S.W.2d 390 (Ark. Ct. App. 1996); *In re Kotrba*, 418 N.W.2d 313 (SD 1988), quoting *Nelson v. Dept of Emp’t Security*, 655 P.2d 242 (WA 1982); 76 Am. Jur. 2d, Unemployment Compensation §§ 77–78.

Claimant was criminally charged with domestic abuse assault. He has entered a plea of “not guilty” and is, therefore, entitled to the presumption of innocence. A mere arrest, without more, is not necessarily sufficient to establish job-related or work-connected misconduct. The conduct for which claimant was discharged was the result of off-duty conduct. The claimant was not even aware of any policy which prohibited the conduct in question and was not aware that his arrest could result in his being separated from employment, either temporarily or permanently. The employer has not provided evidence of such a policy, nor has it provided any evidence establishing a nexus between claimant’s conduct outside work hours and his employment. As such, no disqualification is imposed. Inasmuch as employer has not shown it has a policy governing involuntary leaves of absence for employees with pending criminal charges, the charges are not related to work, and claimant pleaded not guilty, employer has not met the burden of proof to establish that claimant acted deliberately or negligently in violation of company policy, procedure, or prior warning. Benefits are allowed.

DECISION:

The January 29, 2019, (reference 01) unemployment insurance decision is reversed. Claimant was suspended from employment without establishment of misconduct. Benefits are allowed, provided he is otherwise eligible. Any benefits claimed, but withheld, on this basis shall be paid.

Nicole Merrill
Administrative Law Judge

Decision Dated and Mailed

nm/rvs