

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

CONNIE J DAUGHERTY
Claimant

HEARTLAND EMPLOYMENT SERVICES LL
Employer

APPEAL 15R-UI-03543-GT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 12/22/13
Claimant: Appellant (2)**

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

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated December 31, 2014, (reference 02) that held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on April 28, 2015. Claimant participated personally. Employer participated by John O’Fallon, Hearing Representative.

ISSUE:

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

FINDINGS OF FACT:

Claimant remains employed and was involuntarily placed on a leave of absence on or about December 17, 2014 when she reported to employer that she was charged with crime of a simple assault. She soon thereafter entered a plea of not guilty plea and the matter was set for trial. Both parties acknowledge the charges were not related to her employment. Employer does have a policy with respect to removal of employees from work pending resolution of criminal charges. Employer’s policy allows the employer to exercise discretion, and the type of offense that an employee is charged with may call for a different outcome. Generally, if a person is charged with domestic assault or assault they are suspended without pay pending resolution of the criminal case.

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 § 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.

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.

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). 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." When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988).

Although the parties describe 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. An employer may remove an employee for any number of reasons or no reason at all, but if it fails to meet its burden of proof to establish job-related misconduct as the reason for the separation, employer incurs potential liability for unemployment insurance benefits related to that separation. Inasmuch as employer does have a policy governing involuntary leaves of absence for employees with pending criminal charges which allows discretion on the course of action that should be taken, 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.

It is contrary to public policy to deny an employee's right to property, or wages because of an allegation that has been filed with the court. A criminal charge is a mere allegation that has been filed by the State of Iowa. Citizens of our state are allowed the right of due process of law, and are considered innocent until proven guilty beyond a reasonable doubt by a jury of their peers. No evidence was provided that tended to show that the claimant was a danger to herself or her co-workers had she been allowed to continue working pending the outcome of her criminal proceedings. The charge was ultimately dismissed, and claimant is currently employed by employer at this time. Benefits are allowed.

DECISION:

The December 31, 2014 (reference 02) decision is reversed. Claimant was suspended from employment without establishment of misconduct. Benefits are allowed, provided she is otherwise eligible.

Duane L. Golden
Administrative Law Judge

Decision Dated and Mailed

dlg/css