

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**NATHAN S BOHN**

Claimant

**APPEAL NO. 17A-UI-00908-TNT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**BROADLAWNS MEDICAL CENTER**

Employer

**OC: 01/01/17**

**Claimant: Appellant (3)**

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

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from a representative's decision dated January 23, 2017, reference 01, which denied unemployment insurance benefits, finding that the claimant voluntarily quit work on December 7, 2016, without good cause attributable to the employer. After due notice was provided, a telephone hearing was held on February 15, 2017. Claimant participated. The employer participated by Ms. Julie Kilgore, Vice President of Human Resources, and Mr. Blake Renner, Director of Nursing Inpatient Behavioral Health. Employer's Exhibits 1, 2, 3, 4 5, 8, and 9 were admitted into the hearing record. Exhibits 6 and 7 were withdrawn.

**ISSUE:**

The issue is whether the claimant was discharged for misconduct in connection with his work.

**FINDINGS OF FACT:**

Having considered all of the evidence in the record, the administrative law judge finds: Nathan Bohn was employed by Broadlawns Medical Center from August 10, 2015 until December 7, 2016, when he was allowed to resign in lieu of being discharged that day. Mr. Bohn was employed as a full-time behavioral health technician and was paid by the hour. His immediate supervisor was Mr. Blake Renner.

Mr. Bohn was given the option of resigning to protect his employment history or being discharged from employment on December 7, 2016, because Mr. Bohn had failed to notify his employer of a criminal conviction within 48 hours of the conviction as required by Iowa Code Section 135C.33. The law requires that the employer must, within 7 days after receiving notification of the conviction, notify the state's Department of Health and Human Services of the employee's conviction. Employees are required to notify the employer of any criminal convictions that have taken place since the date of their employment with the facility. Employees' responsibility to notify the employer of any convictions that have taken place after the date of hire is addressed in the handbook and also addressed during orientation. On December 6, 2016, Mr. Bohn was taken into custody by law enforcement at the Broadlawns Medical Center facility and transported to jail. A warrant had been issued for Mr. Bohn's arrest

in error, based upon the court system's belief that Mr. Bohn had not completed the terms of his probation. After being arrested, Mr. Bohn provided proof that he had completed the terms of his probation and the claimant was released from jail. As a result of Mr. Bohn's arrest at work that day, the employer became aware that the claimant had been found guilty of assault on September 27, 2015, but had not reported the conviction to the employer as required by law and hospital policy.

On December 7, 2016, the claimant was called to a meeting with Human Resources and his supervisor. At that time, Mr. Bohn verified that he had been found guilty of assault on September 27, 2015, and that he had received a differed sentence. Mr. Bohn offered no excuse for not informing his employer of the conviction that had taken place while he was employed by the Broadlawns Medical Center.

Because the claimant's failure to report the conviction was a serious breach of center's policies and a violation of law that required that the reporting should take place, a decision was made to discharge Mr. Bohn from his employment. The employer gave the claimant the option of resigning from employment in lieu of being discharged. The claimant was aware that if he did not elect to resign he would be discharged for misconduct and that his employment and any benefits associated with his employment would end. Mr. Bohn did not want to be separated from his employment Broadlawns Medical Center, but elected to sign an agreement resigning his position because he knew the alternative was discharge.

It is the claimant's position that he did not want to resign, but by doing so he would not be jeopardizing his employee benefits. It is the claimant's further position that he complied with the requirement that he notify the employer of his conviction, because he had stated on one occasion to Mr. Renner that he was having "domestic issues."

#### **REASONING AND CONCLUSIONS OF LAW:**

The question before the administrative law judge is whether the evidence in the record establishes misconduct on the part of the claimant sufficient to warrant the denial of unemployment insurance benefits; it does.

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(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).

In discharge cases, the employer has the burden of proof. See Iowa Code Section 96.5(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See *Lee v. Employment Appeal Board*, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, 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 employer became aware that the claimant had been earlier convicted of assault on September 27, 2015. The claimant had not informed the employer of the conviction until December 6, 2016, when he was arrested at the job site for failure to complete the terms of his differed/probationary sentence. Broadlawns Medical Center policy and the Iowa Code both require that employees in the claimant's category report any conviction and the law requires the hospital category to submit a report to the Department of Inspections and Appeals for review within a specified time. The claimant knew of the rule as it had been covered in orientation as well as in the statutes and organization's policies and procedures.

After explaining to Mr. Bohn that the employer was going to terminate him from employment, the claimant was given the option of tendering his resignation "in lieu" of being discharged at that time.

Mr. Bohn elected to resign in order to protect his employment history, but was aware that the employer intended to discharge him because he had violated Broadlawns Medical Center policy and the law by failing to report his previous conviction. Mr. Bohn maintains he did not intend to quit and that his resignation was not knowingly made.

Iowa Admin. Code r. 871-24.26(21) provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(21) The claimant was compelled to resign when given the choice of resigning or being discharged. This shall not be considered a voluntary leaving.

The Iowa Administrative Code provisions establishes that under a situation where a person is compelled to resign or be discharged, the claimant's separation from employment is not considered to be a voluntary quit, but considered a termination of employment.

Having established that the claimant was discharged from employment, the question becomes whether the employer has sustained its burden of proof in establishing the claimant's discharge took place under disqualifying conditions. The employer has established that the claimant's employment and the employer's facility were required, not only by center policy but also by law, to report convictions of the type that the claimant was found guilty and that the information be forwarded within a specified time period for evaluation by the Department of Inspections and Appeals. The employer has established that the claimant was made aware of the requirements during orientation and that the claimant was provided copies of center's policies and procedures at the time of orientation. The employer has established that although aware of the requirement that the claimant did not report the conviction within 48 hours to his employer, Mr. Bohn had no explanation for his failure to comply. The claimant's statement to his supervisor that he was having "domestic issues" is not sufficient to inform the employer of a conviction. The administrative law judge concludes that the employer has sustained its burden of proof in establishing misconduct on the part of the claimant sufficient to warrant the denial of unemployment insurance benefits. The claimant, in this matter, was not discharged because he was mistakenly arrested at work, but because the employer then became aware that the claimant had failed to report being found guilty for assault one year earlier, but had not reported the conviction to the employer as required.

**DECISION:**

The representative's decision dated January 23, 2017, reference 01, is affirmed as modified. The portion of the determination disqualifying the claimant from receiving benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount is affirmed. The portion of the determination finding the claimant voluntarily resigned his employment is modified that the claimant was discharge for misconduct in connection with his work.

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Terry Nice  
Administrative Law Judge

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Decision Dated and Mailed

rvs/rvs