

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**MICHEAL S GOULD**  
Claimant

**FAREWAY STORES INC**  
Employer

**APPEAL 15A-UI-08586-JP-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 07/05/15**  
**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the July 28, 2015, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on August 20, 2015. Claimant participated. Employer participated through Training and Development Specialist Maggie Worrall. Employer Exhibit One was admitted into evidence with no objection.

**ISSUE:**

Was the claimant discharged for disqualifying job-related misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed part-time as a market clerk from May 23, 2012, and was separated from employment on June 4, 2015, when he was discharged.

The employer has an outside activities policy which requires employees to follow their standard of conduct and avoid conduct that is detrimental to the company, for example a criminal conviction. Employer Exhibit One. The policy provides that an employee that engages in “conduct during the course of your employment or outside of the course of your employment that results in a criminal charge or charges and subsequent conviction for a crime could result in termination.” Employer Exhibit One. The claimant was made aware of the employer’s policy at the time of hire. When an employee is considered for employment, the employer runs a background check and if there is a crime against a person in the previous three years they are not eligible for hire. Ms. Worrall testified that when an employee is convicted of a crime against a person, the employee is typically discharged.

Claimant was charged in Fayette County District Court case number SRCR066461 with assault causing bodily injury. Employer Exhibit One. On June 4, 2015, the employer placed claimant on unpaid suspension pending the resolution of his criminal case. Employer Exhibit One. On July 2, 2015, claimant pled guilty to the offense of simple assault in case number SRCR066461.

Employer Exhibit One. Claimant was discharged on July 10, 2015, after his conviction, for violating the outside activities policy. Employer Exhibit One.

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

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct. Benefits are denied.

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).

Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.*

The employer has presented substantial and credible evidence that claimant was acting against the best interests of the employer and the safety of the general public by engaging in an act that resulted in a criminal conviction for simple assault. Claimant was aware of the employer's outside activities policy when he was hired. Claimant knew that a conviction for simple assault would violate the outside activities policy. Claimant still pled guilty to the crime of simple assault. An employee's conviction for a crime against a person is clearly against the best

interests of the employer. The employer does not even consider someone for employment if they have been convicted of a crime against a person in the past three years of applying. Claimant failed to abide by the employer's outside activity policy.

The employer has presented substantial and credible evidence that claimant engaged in a criminal act of violence against another person. This is disqualifying misconduct without a prior warning.

**DECISION:**

The July 28, 2015, (reference 01) unemployment insurance decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

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Jeremy Peterson  
Administrative Law Judge

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Decision Dated and Mailed

jp/pjs