

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

THOMAS S DOE
Claimant

MOSAIC
Employer

APPEAL 16A-UI-04771-SC-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 08/02/15
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

Thomas S. Doe (claimant) filed an appeal from the April 21, 2016, (reference 04) unemployment insurance decision that denied benefits based upon the determination Mosaic (employer) discharged him for conduct not in its best interest. The parties were properly notified about the hearing. A telephone hearing was held on May 9, 2016. The claimant participated personally. The employer participated through Human Resources Manager Teresa TeKolste and Human Resources Generalist Nicki Streed. It was represented by Michele Hawkins of Talx UCM Services. Employer's Exhibits 1 and 2 were received.

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: The claimant was employed full time as a direct support associate beginning on April 29, 2014, and was separated from employment on February 29, 2016, when he was discharged. The employer has a policy that if employees are charged with traffic violations or arrested, they must report it to their supervisors before their next shift or within five days of the incident. The employer also has a policy that if an external investigation into an employee's conduct takes longer than 60 days an employee is discharged.

The claimant was arrested and charged with assault on or about December 24, 2015. He and his roommate had gotten into a verbal argument that evening. The claimant worked over the Christmas holiday without notification as there were no supervisors available to report the incident. On December 27, 2015, the employer received notice from an outside source that the claimant had been arrested. It suspended his employment on December 29, 2015 pending the outcome of the external investigation into the charges.¹

¹ The claimant was disqualified from receiving benefits during his suspension in a fact-finding decision dated January 29, 2016 (reference 03) which he did not appeal.

On February 25, 2016, the claimant reported to the employer that his court date had been continued again to March 22, 2016. The employer discharged him on February 29, 2016 as the external investigation had taken longer than the allotted 60 days. The charges against the claimant were dismissed in March 2016.

REASONING AND CONCLUSIONS OF LAW:

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

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 an at-will employment environment an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job-related misconduct as the reason for the separation, it incurs potential liability for unemployment insurance benefits related to that separation. 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." 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 claimant was discharged as the external investigation into the assault charges had taken longer than 60 days. The court date was continued twice due to his roommate's failure to appear. The claimant did not engage in any willful or deliberate misconduct to extend the external investigation. The employer has not met the burden of proof to establish that the claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning. Accordingly, benefits are allowed effective February 28, 2016, provided he is otherwise eligible.

DECISION:

The April 21, 2016, (reference 04) unemployment insurance decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed effective February 28, 2016, provided he is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

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