

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ALESHA R MOYLE**  
Claimant

**APPEAL NO: 12A-UI-05406-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OPTIMAE LIFESERVICES INC**  
Employer

**OC: 04/15/12**  
**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge  
871 IAC 24.32(9) – Suspension or Disciplinary Layoff

**STATEMENT OF THE CASE:**

Alesha R. Moyle (claimant) appealed a representative's May 2, 2012 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits after an at least temporary separation from employment from Optimae Lifeservices, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 31, 2012. The claimant participated in the hearing. Idah Newquist appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

Was the claimant discharged or suspended for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant started working for the employer on December 8, 2010. She worked full-time as a community support staffperson in the employer's mental health service, most recently working in the employer's Adel residential home. Her last day of work was April 4, 2012. She was suspended on that date. On May 24, 2012, she was sent a letter informing her that the employer could no longer hold her position, so that she was discharged.

The claimant was suspended pending resolution of a non-work-related charge that had been filed against her on April 4. On that date, the claimant was informed that she was being charged with simple assault in connection with an incident the complainant alleged had occurred on April 2 at the local post office; the complainant alleged that the claimant had slapped her on that date. The complainant and the incident had no connection to the claimant's employment, but the employer was concerned that if the allegation was true, it could affect the claimant's eligibility to continue in her employment with the employer, so it suspended her pending the outcome of the case.

The claimant denied any involvement in an incident with the complainant, and provided information indicating that she was not even at the post office on April 2 and had had no interaction with the complainant. She has pled not guilty to the criminal charge; a jury trial is pending for later in June. The claimant informed the employer of the status of her plea and pending trial. However, on May 24 the employer determined that it could no longer wait and hold her position, and informed her that her employment was ended.

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

A claimant is not qualified to receive unemployment insurance benefits if an employer has suspended or discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was suspended or discharged for work-connected misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982); Iowa Code § 96.5-2-a. For purposes of unemployment insurance eligibility, a suspension is treated as a temporary discharge and the same issue of misconduct must be resolved. 871 IAC 24.32(9).

In order to establish misconduct such as to disqualify an employee from benefits, an employer must establish the employee was responsible for a deliberate act or omission that was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445 (Iowa 1979); *Henry v. Iowa Department of Job Service*, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior that 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. 871 IAC 24.32(1)a; *Huntoon*, supra; *Henry*, supra. In contrast, 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. 871 IAC 24.32(1)a; *Huntoon*, supra; *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984).

The reason cited by the employer for suspending and subsequently effectively discharging the claimant is the pending criminal proceeding. First, under the definition of misconduct for purposes of unemployment benefit disqualification, the conduct in question must be "work connected." *Diggs v. Employment Appeal Board*, 478 N.W.2d 432 (Iowa App. 1991). The employer has not established that even if the claimant was guilty of assaulting the complainant in question that this would in fact have sufficient impact on or relation to the claimant's employment to be "work connected." Further, it is the employer's burden to establish by a preponderance of the evidence that misconduct in fact occurred—that the evidence shows that it is "more likely than not" that the alleged activity occurred. A mere belief that the activity "could have occurred" is not sufficient; a mere allegation of misconduct without corroboration is not sufficient to result in disqualification. 871 IAC 24.32(9). The employer has not established that the claimant most likely did commit the alleged assault. The employer has not met its burden to show disqualifying misconduct. *Cosper*, supra. The claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

**DECISION:**

The representative's May 2, 2012 decision (reference 01) is reversed. The employer suspended and then effectively discharged the claimant, but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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