

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KENDORA KNOX-HAYDEN
Claimant

APPEAL 20A-UI-04651-CL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

REM IOWA COMMUNITY SERVICES INC
Employer

OC: 08/04/19
Claimant: Appellant (2)

Iowa Code § 96.5(2)a – Disciplinary Suspension/Misconduct
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
PL 116-136, Sec. 2104(b) – Federal Pandemic Unemployment Compensation

STATEMENT OF THE CASE:

On May 26, 2020, the claimant filed an appeal from the May 22, 2020, (reference 03) unemployment insurance decision that denied benefits based on a suspension from employment. The parties were properly notified about the hearing. A telephone hearing was held on June 11, 2020. Claimant participated. Employer participated through program director Katie Blunt and was represented by Toni McColl.

ISSUES:

Was claimant suspended for job-related misconduct?
Was the claimant overpaid unemployment insurance benefits?
Is the claimant eligible for Federal Pandemic Unemployment Compensation?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on September 4, 2019. Claimant last worked as a full-time direct support professional. Claimant was suspended from employment effective March 16, 2020.

Employer requires employees to pass a background check with the Iowa Department of Human Services in order to work as a direct support professional. Claimant was aware of the policy.

On March 16, 2020, claimant was arrested and charged with theft and forgery. Claimant has pleaded not guilty to the crimes and the charges are pending.

Program director Katie Blunt learned of the charges and informed claimant she would have to pass a DHS background check in order to maintain employment. Until then, claimant remains on unpaid leave.

Claimant submitted information necessary to run the background check. DHS informed employer it cannot complete the background check until the charges against claimant are resolved.

The resolution of the charges has been delayed due to the COVID 19 pandemic.

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 section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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. This rule is intended to implement Iowa Code section 96.5 and Supreme Court of Iowa decision, *Sheryl A. Cospers vs. Iowa Department of Job Service and Blue Cross of Iowa*.

The employer has the burden of proving disqualifying job misconduct. *Cospers v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982).

The employer has the burden of proof in establishing disqualifying job misconduct. *Cospers v. Iowa Department of Job Service*, 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. IDJS*, 364 N.W.2d 262 (Iowa 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. IDJS*, 425 N.W.2d 679 (Iowa 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 Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Employment Appeal Board*, 423 N.W.2d 211 (Iowa App. 1988).

In this case, employer has suspended claimant until the Iowa DHS completes a background check either approving or denying her to work as a direct support professional. The background

check has not been completed because of pending criminal charges against claimant. Claimant is fighting the charges against her. In the American legal system, a criminal defendant is presumed innocent until proven guilty. Employer has not established it suspended claimant for job-related misconduct.

Benefits are allowed. Because benefits are allowed, there is not overpayment of benefits and claimant is eligible for Federal Pandemic Unemployment Compensation. See PL 116-136, Sec. 2104(b).

DECISION:

The May 22, 2020, (reference 03) decision is reversed. Claimant was suspended from employment without establishment of misconduct. Benefits are allowed, provided claimant is otherwise eligible.



Christine A. Louis
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515)478-3528

June 26, 2020
Decision Dated and Mailed

cal/sam