

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DEBORAH J SCHMITZ
Claimant

CRESTVIEW ACRES INC
Employer

APPEAL 16A-UI-09189-LJ-T
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 07/24/16
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the August 18, 2016, (reference 01) unemployment insurance decision that denied benefits based upon a determination that claimant was discharged for violation of a known company rule. The parties were properly notified of the hearing. A telephone hearing was held on September 9, 2016. The claimant, Deborah J. Schmitz, participated. The employer, Crestview Acres, Inc., participated through Jason Vanderveer, administrator.

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 full time, most recently as a charge nurse, from September 25, 2015, until July 22, 2016, when she was discharged for failing to report an arrest. The employer maintains a policy that every employee must report conviction of a crime within 48 hours of the conviction occurring. The employer explained that this policy is put in place because it is a care center and must perform a new background check for any employee convicted of a crime. Vanderveer confirmed that this written policy does not use the word “arrest.”

Claimant was arrested in February 2016 and initially charged with “prohibited acts.” On July 19, 2016, claimant attended her pre-trial hearing and entered a plea deal. Claimant pled guilty to possession of a controlled substance in exchange for a deferred judgment, community service, and unsupervised release. If claimant successfully completes her period of unsupervised release, her deferred judgment will be expunged. Vanderveer saw claimant’s name in the paper related to her arrest and deferred judgment. On July 22, he asked claimant about this to confirm that it was her. Claimant said it was her and told him not to worry about it. Vanderveer consulted with the owner, and the owner decided to discharge claimant.

Claimant did not report either the arrest or the deferred judgment to the employer, as she believed the policy only required her to report arrest or conviction of adult or child abuse.

Additionally, claimant testified that other employees have been arrested for crimes other than abuse and have not been fired. Claimant recalled one employee who called in and reported he would not be coming to work because he had been arrested. This employee remained employed for several months after that day.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was 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. 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.

During the hearing, claimant presented uncontested testimony that the employer does not fairly enforce its alleged policy regarding arrest and conviction reports. Specifically, claimant testified that other employees have been arrested for and charged with crimes other than abuse, and those employees remain employed. The employer knew about at least one of these employees, as that employee called in because he had been arrested. Additionally, the administrative law judge is not convinced that the employer's policy informs the employees that they must report an arrest, as the policy only used the term "conviction." Therefore, even though the claimant may have failed to promptly report her arrest and deferred judgment (and assuming that conduct was in fact a policy violation), since the consequence was more severe than other employees received for similar conduct, the disparate application of the policy cannot support a disqualification from benefits. Benefits are allowed.

DECISION:

The August 18, 2016, (reference 01) unemployment insurance decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible.

Elizabeth A. Johnson
Administrative Law Judge

Decision Dated and Mailed

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