

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**RICARDO L SMALL**  
Claimant

**GLOBAL SPECTRUM LP**  
Employer

**APPEAL 15A-UI-09924-CL-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 08/09/15**  
**Claimant: Appellant (2)**

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

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the August 28, 2015, (reference 01) unemployment insurance decision that denied benefits based upon misconduct. The parties were properly notified about the hearing. A telephone hearing was held on September 17, 2015. Claimant participated. Employer participated through director of finance, Diane Frischmeyer.

**ISSUE:**

Was the claimant suspended 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 as a building coordinator from December 18, 2012, and was separated from employment on July 16, 2015, when he was suspended without pay.

Claimant was arrested on July 15, 2015, for misdemeanor assault. Claimant was released shortly thereafter and missed no work due to the arrest. On July 16, 2015, employer learned of claimant's arrest. Claimant's arrest was based on an incident unrelated to the workplace.

Employer has a policy stating that if an employee is arrested, his employment is suspended until legal proceedings are resolved. The policy is included in employer's handbook, which claimant has access to.

On July 16, 2015, claimant's supervisor, Jason, told claimant he was suspended without pay because of his arrest. Human resource manager, Katie Johnson explained to claimant that he might be able to return to work at the resolution of his case, depending on the outcome.

Claimant has pled not guilty to the charge of misdemeanor assault. A trial date is set for October.

## 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 § 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(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.

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." When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988).

An employer may remove an employee for any number of reasons or no reason at all, but if it fails to meet its burden of proof to establish job-related misconduct as the reason for the separation, employer incurs potential liability for unemployment insurance benefits related to the separation.

The criminal charges against claimant are not related to work. Further, claimant is presumed to be innocent until he pleads or is proven guilty.

The employer's evidence as a whole failed to establish that claimant was guilty of misconduct within the meaning of unemployment law. As such, no disqualification is imposed on that basis.

**DECISION:**

The August 28, 2015, (reference 01) unemployment insurance decision is reversed. Claimant was suspended from employment without establishment of misconduct. Benefits are allowed, provided claimant is otherwise eligible.

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Decision Dated and Mailed

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