

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

TAJUANA M ROBINSON
Claimant

APPEAL 18A-UI-01576-NM-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

O'REILLY AUTOMOTIVE INC
Employer

OC: 01/07/18
Claimant: Respondent (1)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

STATEMENT OF THE CASE:

The employer filed an appeal from the January 26, 2018, (reference 01) unemployment insurance decision that allowed benefits. The parties were properly notified of the hearing. A telephone hearing was held on February 28, 2018. The claimant participated through a written statement. The employer participated through Criminal Background Check Coordinator Larry Herron and Store Manager John Wallace. Employer's Exhibits 1 through 8 and claimant's Exhibit A and B were received into evidence. Official notice was taken of the administrative record.

ISSUES:

Was the claimant discharged for disqualifying job-related misconduct?

Has the claimant been overpaid any unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?

Can any charges to the employer's account be waived?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a delivery specialist from March 25, 2015, until this employment ended on August 9, 2017, when she was discharged.

On June 23, 2017, claimant was arrested outside of work for alleged conduct that occurred on her personal time and was unrelated to her work. (Exhibit 3). Claimant missed the next several days of work because she was incarcerated, but her mother notified her employer of her arrest and that she would not be in to work. Following her arrest claimant made a written statement to the employer about the incident, in which she denied any wrong-doing. (Exhibit 4). Claimant was suspended effective June 27, 2017 per the employer's Code of Conduct. (Exhibit 2). The

Code of Conduct prohibits employees from engaging in any illegal activity and provides for a 42 day suspension period while criminal legal matters are pending. (Exhibit 6). The policy further provides that if the charges are not resolved by the end of the 42 day suspension the employee will be terminated. Claimant's criminal charges were not resolved by August 8, 2017, the end of her 42 day suspension period, and she was discharged. (Exhibit 1). The charges against claimant were dismissed on December 8, 2017. (Exhibit B).

The claimant filed a new claim for unemployment insurance benefits with an effective date of January 7, 2018. The claimant filed for and received a total of \$1,368.00 in unemployment insurance benefits for the weeks between January 7 and February 17, 2018. Both the employer and the claimant participated in a fact finding interview regarding the separation on January 25, 2018. The fact finder determined claimant qualified for benefits.

REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code section 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.

871 IAC 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 Department of Job Service*, 275 N.W.2d 445, 448 (Iowa 1979).

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). Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984).

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.

Here, the claimant was suspended immediately following an arrest. The crime for which claimant was arrested was not related to her work and did not occur on work time. Claimant was discharged on August 8, 2017, when the criminal charges had not yet been resolved. In order to be disqualified for benefits the employer must show that the misconduct was connected to the claimant's employment. The employer has failed to show any connection between claimant's arrest and her employment or that she even engaged in the alleged behavior, as the charges against claimant were ultimately dismissed, supporting her denial that she ever engaged in any wrong doing. Benefits are allowed. The issues of overpayment and participation are moot.

DECISION:

The January 26, 2018, (reference 01) unemployment insurance decision is affirmed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

Nicole Merrill
Administrative Law Judge

Decision Dated and Mailed

nm/rvs