

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**LISA K BYERLY**  
Claimant

**APPEAL NO: 09A-UI-03320-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**FAREWAY STORES INC**  
Employer

**OC: 01/11/09**  
**Claimant: Respondent (1)**

Section 96 .5-2-a – Suspension/Discharge

**STATEMENT OF THE CASE:**

Fareway Stores, Inc. (employer) appealed a representative's February 24, 2009 decision (reference 01) that concluded Lisa K. Byerly (claimant) was qualified to receive benefits, and the employer's account was subject to charge because the claimant had been suspended for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 25, 2009. The claimant participated in the hearing. Garrett Piklapp, Attorney at Law, represented the employer. Tom Ross, the store manager, testified on the employer's behalf. During the hearing Employer Exhibits One, Two and Three were offered and admitted as evidence. 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:**

Did the employer suspend the claimant for reasons constituting work-connected misconduct?

**FINDINGS OF FACT:**

The claimant started working for the employer on August 9, 1999. The claimant worked part-time, 20 to 25 hours a week, in the produce department. The claimant usually worked in the back and did not have much direct contact with customers.

During her employment, the claimant received a copy of the employer's handbook. (Employer Exhibit Two.) The employer's policy in part informs employee they should avoid outside activities that would have a negative impact on the employer's reputation in the community. (Employer Exhibit One.)

Prior to January 9, 2009, the claimant did not have an attendance problem and her job was not in jeopardy. On January 9, 2009, the claimant did not call or report to work for her 10:00 a.m. to 2:00 p.m. shift. (Employer Exhibit Three.) The employer considered this an unexcused absence after learning she had not reported to work because she had been arrested and was in jail.

The claimant was arrested after her stepson reported that the claimant and her husband physically abused him. The claimant told the employer what her stepson told the police. The claimant disputes her stepson's version of events. While the claimant may have spanked her stepson, he obtained a bruise when he fell, not when the claimant spanked him.

After the claimant was released from jail she talked to close personal friends who worked with her. The claimant talked to her two close friends at work and outside work about what happened with her stepson. Based on the incident with her stepson, the charges, the fact the claimant did not work as scheduled on January 9 and talked to two co-workers about the incident, the employer concluded the January incident that occurred outside of work reflected negatively upon the employer and the employer's reputation. On January 14, 2009, the employer suspended the claimant without pay. (Employer Exhibit Three.)

When the claimant's charges have been resolved, the employer will decide the consequences of her continued employment.

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

A claimant is not qualified to receive unemployment insurance benefits if an employer suspends or discharges her for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

Even though the incident with her stepson led to the claimant's arrest and inability to work as scheduled on January 9, 2009, this isolated attendance issue does not rise to the level of work-connected misconduct. The incident between the claimant and her stepson does not establish that the claimant intentionally acted in such a way that would have a negative impact upon the employer. The claimant used poor judgment when she talked to close friends who worked with her at work. Based on the evidence presented, the facts do not indicate the employer's reputation has been harmed or has been negatively impacted by the claimant's outside activities that led to her arrest.

The employer established compelling business reasons for suspending the claimant, but these reasons do not constitute work-connected misconduct.

**DECISION:**

The representative's February 24, 2009 decision (reference 01) is affirmed. The employer suspended the claimant for reasons that do not constitute work-connected misconduct. As of January 11, 2009, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/css