

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**DENICE A GIOVANNONI**  
Claimant

**APPEAL 18A-UI-05841-H2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IA DEPT OF HUMAN SVCS/GLENWOOD**  
Employer

**OC: 05/06/18**  
**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the May 21, 2018, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on June 13, 2018. Claimant participated. Employer participated through Natalie McEwan, Public Service Supervisor and was represented by Malia Maples, of Employer's Edge. Employer's Exhibits 1 through 7 were admitted into the record.

**ISSUE:**

Was the claimant discharged due to job connected misconduct sufficient to disqualify her from receipt of unemployment insurance benefits?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a resident treatment worker beginning on March 26, 2003 through May 7, 2018, when she was discharged.

The claimant was given a copy of both the Department of Human Services rules and the handbook for State of Iowa employees during her employment. She knew she was expected to comply with both sets of rules. She also knew that if she was arrested or charged with a felony or simple misdemeanor, (other than parking tickets) she was required to report such information to her employer. The rules specifically require she report any arrest within twenty-four hours of the occurrence.

Claimant was pulled over for speeding in Mills County near Atlantic, Iowa on April 1, around 10:00 p.m. The officer discovered that claimant had a Pottawattamie County bench warrant out for her arrest on charges of fifth degree theft. Claimant was arrested and taken to jail in Pottawattamie County. At around 1:06 a.m. on the morning of Monday, April 2, claimant sent a text to a supervisor indicating she would not be at work for her 8:00 a.m. shift because she was having car problems. That was not true as claimant was going to miss work that day because she was still being held in jail in Pottawattamie County. On April 3, at 1:40 a.m., the claimant sent another text to a different supervisor indicating she would not be into work on April 3 because she had a migraine. Around 8:00 p.m. on April 3, the claimant called Mr. Mayhew, another supervisor, at home to tell him that she had legal problems. During the conversation

the claimant told Mr. Mayhew what had happened and that she had been arrested. Mr. Mayhew told her to come to work on April 4 and they would discuss the details at that time. Claimant reported for work on April 4. On April 4, Mr. Mayhew notified the human resources department and his supervisor what he had learned from the claimant the night before.

After Mr. Mayhew notified human resources, a meeting was held with claimant, Mr. Mayhew and Ms. McEwan. Before Ms. McEwan asked the claimant any questions, she read to the claimant the rule in the handbook requiring the claimant to be honest during any investigation. The claimant knew that she was required to be honest with her employer during the investigation. Ms. McEwan then asked the claimant if she had missed some work. The claimant told her she had and then told Ms. McEwan that she had missed work on Monday due to car problems and on Tuesday due to a migraine. Ms. McEwan then asked the claimant if she had been arrested. The claimant admitted she had been arrested and that she had lied to Ms. McEwan when she told her she missed work due to car problems.

After the interview was completed, the claimant was placed on paid suspension while the employer investigated to determine what action, if any they were going to take. On May 7, the claimant was called back in to meet with the superintendent Mr. Ray and Ms. McEwan. At the meeting claimant was asked if she had any additional information she wanted to provide to the employer before she was told what was going to happen. Claimant provided no additional information. Claimant was discharged for two violations of the work rules: failing to report an arrest to the employer within twenty-four hours of an occurrence and for lying to the employer during the course of an investigation.

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

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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(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).

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).

The claimant was responsible for knowing how long she had to report her arrest as she was responsible for complying with the work rules. Claimant did not timely report her arrest, despite the fact that she texted two different supervisors while she was in jail. Claimant could have notified either of those supervisors of her arrest, but chose not to do so.

At the investigatory meeting on April 4, the claimant was specifically told that work rules required she be honest with the employer during the investigation. The claimant lied to Ms. McEwan when she told her she missed work due to car problems. Claimant admitted both during the investigatory meeting and during the unemployment hearing that she lied to Ms. McEwan about why she missed work on Monday April 2. An employer has a right to expect employees to be honest with them in their dealings. The work rules specifically warned claimant that either failure to report her arrest, or dishonesty during an investigation could lead to her discharge. Employer has established that claimant violated both work rules. Claimant's violation of each rule is conduct not in the employer's best interests and under these circumstances is sufficient job-connected misconduct to disqualify her from receipt of unemployment insurance benefits. Benefits are denied.

**DECISION:**

The May 21, 2018, (reference 01) unemployment insurance decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

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Teresa K. Hillary  
Administrative Law Judge

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Decision Dated and Mailed

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