

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**DANIEL RODRIGUEZ**  
Claimant

**NATIONWIDE MUTUAL INS CO**  
Employer

**APPEAL NO. 14A-UI-05805-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 05/04/14**  
**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

Daniel Rodriguez (claimant) appealed an unemployment insurance decision dated May 28, 2014, (reference 01), which held that he was not eligible for unemployment insurance benefits because he was discharged from Nationwide Mutual Insurance Company (employer) for work-related misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 27, 2014. The claimant participated in the hearing. The employer participated through Senior Associate Relations Consultant Frank Maroni.

**ISSUE:**

The issue is whether the claimant was discharged for work-related misconduct.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant most recently worked as a full-time direct national retention agent and was employed from January 23, 2012, through May 7, 2014, when he was discharged because he pled guilty to felony burglary, which was a violation of the employer's bonding policy. He was required to be bonded as a condition of employment and after his guilty plea, even though it was a deferred judgment, he could no longer be bonded.

The claimant was accused in November 2013 of burglarizing a previous employer and he immediately notified Manager John Sheffler. The theft had occurred over a period of time when he was employed with the current employer. On approximately December 5, 2013, he was criminally charged with Burglary in the Third Degree. The claimant agreed on March 10, 2014, to plead guilty if he could get a deferred judgment because he believed that would save his employment. He understood that he would not lose his insurance license if he received a deferred judgment. The claimant was advised he could only get a deferred judgment if the charges remained the same. He was contacted on April 8, 2014, by Senior Associate Relations

Consultant Frank Maroni, who asked him if he was familiar with the bonding policy and he said he was. The claimant formally pled guilty to Burglary in the Third Degree on April 22, 2014, and agreed to make restitution to the victim. He was given a deferred judgment, which prevented him from losing his insurance license but he did plead guilty to felony burglary. Mr. Maroni spoke with him on April 22, 2014, and advised him the matter was being reviewed. The claimant was subsequently discharged for violating the bonding policy. He could no longer be bonded and that was a condition of his employment.

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

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-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. 871 IAC 24.32(1).

The employer has the burden to prove the discharged employee is disqualified for benefits for misconduct. *Sallis v. Employment Appeal Bd.*, 437 N.W.2d 895, 896 (Iowa 1989). The claimant was discharged on May 7, 2014, for violation of the employer's bonding policy. His off-duty actions interfered with his ability to work for the employer. Under the definition of misconduct for purposes of unemployment benefit disqualification, the conduct in question must be "work connected." *Diggs v. Employment Appeal Board*, 478 N.W.2d 432 (Iowa App. 1991).

The court has concluded that some off-duty conduct can have the requisite element of work connection. *Kleidosty v. Employment Appeal Board*, 482 N.W.2d 416, 418 (Iowa 1992). There must be some connection between the off-duty conduct and the employment, even if the employer has a rule prohibiting the conduct. The off-duty conduct would not be "misconduct in connection with the individual's employment" unless the employer establishes some harm or potential harm to its interests from the conduct beyond the fact that a rule was violated. See *Dray v. Director*, 930 S.W.2d 390 (Ark. App 1996); *In re Kotrba*, 418 N.W.2d 313 (SD 1988), quoting *Nelson v. Department of Employment Security*, 655 P.2d 242 (WA 1982); 76 Am. Jur. 2d, Unemployment Compensation §§77–78.

Under the facts of this case, the claimant's off-duty conduct established harm to the employer since the employer could no longer employ the claimant after he pled guilty to a felony. The claimant knew or should have known that, at a minimum, the type of criminal conduct in which he engaged was conduct which would "reflect adversely" on the employer. The employer has met its burden. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

**DECISION:**

The unemployment insurance decision dated May 28, 2014, (reference 01), is affirmed. The claimant is not eligible to receive unemployment insurance benefits because he was discharged from work for misconduct. Benefits are withheld until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

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Susan D. Ackerman  
Administrative Law Judge

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Decision Dated and Mailed

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