

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**TINA M DURANT**  
Claimant

**APPEAL NO. 14A-UI-09631-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HY-VEE INC**  
Employer

**OC: 08/17/14**  
**Claimant: Respondent (1)**

Section 96.5(2)a – Discharge

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from a representative's decision dated September 9, 2014 (reference 01) which held claimant eligible to receive unemployment insurance benefits. After due notice was provided, a telephone hearing was held on October 6, 2014. Claimant participated. The employer participated by Mr. Larry Lampel, Hearing Representative, and Ms. Penny Wrage, Human Resource Manager.

**ISSUE:**

At issue is whether the evidence in the record establishes misconduct in connection with the claimant's employment.

**FINDINGS OF FACT:**

Having considered all the evidence in the record, the administrative law judge finds: Tina Durant was employed by Hy-Vee Inc. from July 19, 2007 until August 20, 2014 when she was discharged from employment. Ms. Durant was employed as a part-time checker and was paid by the hour.

Ms. Durant was discharged from Hy-Vee Inc. on August 20, 2014 after it was recorded in a local newspaper that the claimant had been charged with child endangerment. The claimant's 12-year-old daughter had become pregnant as a result of alleged sexual abuse by another person. It was alleged that the claimant failed to protect the victim by notifying law enforcement or the Department of Human Services or by taking any action herself. Following a publication of the newspaper article that day, the store director had received some calls from company customers concerning Ms. Durant's continued employment although Ms. Durant had not been identified as a Hy-Vee Inc. employee in the newspaper account.

A decision was made to terminate Ms. Durant based upon the employer's belief that her off-duty conduct had violated the company's "code of conduct." The company's code of conduct states that keeping the fundamentals of honesty, integrity, friendliness, caring, sincerity, respect, ethics, morals, dedication, sharing, manners, dignity, and ownership helps employees to provide outstanding service to customers, that the customers have grown to expect.

Prior to her discharge, the claimant had not been warned or counseled about any issues. The claimant has pled not guilty to child endangerment charges and is awaiting trial.

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

The question before the administrative law judge is whether the evidence in the record establishes a sufficient nexus or connection between the claimant's off-duty conduct and her employment with Hy-Vee Inc. sufficient to warrant the denial of unemployment insurance benefits. It does not.

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(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).

In discharge cases, the employer has the burden of proof to establish disqualifying conduct on the part of the claimant. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee may not necessarily be serious enough to warrant a denial of unemployment benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. of Appeals 1992).

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, the employer incurs potential liability for unemployment insurance benefits related to that separation. In the case at hand, the evidence in the record does not establish sufficient job-related misconduct as the reason for the claimant's separation from employment. Ms. Durant had been charged with child endangerment that had no direct relationship to her employment at Hy-Vee Inc. The alleged act or acts took place off-duty and away from Hy-Vee Inc. The claimant was not identified in a newspaper account as being a Hy-Vee Inc. employee and although charged the claimant has pled not guilty to the charges and there has been no disposition of the claimant's guilt or innocence.

The question in this case is not whether the employer has a right to discharge Ms. Durant for this reason but whether the discharge is disqualifying under the provisions of the Employment Security Law. While the decision to terminate Ms. Durant, because some customers may have recognized her name and associated it with her employment at Hy-Vee Inc., may have been a good business decision; the evidence in the record does not establish a sufficient nexus or connection between the claimant's off-duty non-work-related conduct and her discharge from employment sufficient to disqualify the claimant from receiving unemployment insurance benefits. The claimant would not have reasonably known, based upon the generalized statement in the company's code of conduct, that her alleged failure to provide proper parental supervision might jeopardize her employment with Hy-Vee Inc. The connection between the claimant's off-duty conduct and her employment with Hy-Vee Inc. was not sufficient to disqualify the claimant from receiving unemployment insurance benefits after being discharged from her employment with this company. Benefits are allowed, provided the claimant is otherwise eligible.

**DECISION:**

The representative's decision dated September 9, 2014 (reference 01) is affirmed. The claimant was discharged under non-disqualifying conditions. Unemployment insurance benefits are allowed, provided the claimant is otherwise eligible.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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