

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ROYCE A DINAPOLI**  
Claimant

**APPEAL NO. 15A-UI-06595-S1-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CATHOLIC HEALTH INITIATIVES - IOWA**  
Employer

**OC: 05/03/15**  
**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Royce DiNapoli (claimant) appealed a representative's May 28, 2015, decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits because he voluntarily quit work with Catholic Health Initiatives - Iowa (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for July 16, 2015. The claimant participated personally. The employer provided a document prior to the hearing indicating it did not wish to participate in the hearing.

**ISSUE:**

The issue is whether the claimant was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on October 31, 2005, as a full-time maintenance mechanic. The claimant received the employer's handbook. The employer did not issue the claimant any warnings until the end of his employment.

On December 11, 2014, the claimant worked his last day. Later that evening at home, he was involved in an argument. The police were called and the claimant spent one day in jail. The claimant did not properly report his absence at work on December 12, 2014. On December 15, 2014, the employer issued the claimant a two-day suspension for his absence. The employer had the claimant take Family Medical Leave (FMLA) from December 11, 2014, to March 11, 2015, while the claimant waited for the legal issues to become final. After March 11, 2015, the employer continued to think of the claimant as an employee and granted him additional leave. Those issues were not complete until March 27, 2015. The claimant sought work from the employer after March 27, 2015, but the employer did not have work for the claimant. On June 11, 2015, the employer sent the claimant a letter of termination.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

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).

Iowa Admin. Code r. 871-24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

The employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Off premises during lunch hour, claimant assaulted co-worker for alleged rumors spread by co-worker. Court of Appeals allowed benefits, noting lack of evidence of negative impact at work place plus fact that claimant

finished the day before being discharged. Diggs v. Employment Appeal Board, 478 N.W.2d 432 (Iowa App. 1991).

The employer must establish not only misconduct but that there was a final incident of misconduct which precipitated the discharge. The last incident provided by the employer occurred on December 11, 2014. It was an off premises incident and the claimant was not discharged until June 11, 2015. The employer did not participate in the hearing and has failed to provide any evidence of willful and deliberate misconduct which was the final incident leading to the discharge. There was no evidence of negative impact at the work place. The employer did not meet its burden of proof to show misconduct. Benefits are allowed.

**DECISION:**

The representative's May 28, 2015, decision (reference 01) is reversed. The employer has not met its proof to establish job-related misconduct. Benefits are allowed.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

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