

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**LUCIANO TARIN GONZALEZ**  
Claimant

**APPEAL NO. 13A-UI-02927-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HY-VEE INC**  
Employer

**OC: 02/03/13**  
**Claimant: Appellant (2)**

Section 96.5(2)a – Suspension

**STATEMENT OF THE CASE:**

The claimant, Luciano Tarin Gonzalez, filed an appeal from a decision dated March 6, 2013, reference 01. The decision disqualified him from receiving unemployment benefits. After due notice was issued a hearing was held by telephone conference call on April 9, 2013. The claimant participated on his own behalf. The employer, Hy-Vee, participated by Human Resources Manager Mandy Hirshman, Assistant Vice President of Distribution Lisa Stowater and was represented by Corporate Cost Control in the person of Ajah Anderson.

**ISSUE:**

The issue is whether the claimant was suspended for misconduct sufficient to warrant a denial of unemployment benefits.

**FINDINGS OF FACT:**

Luciano Gonzalez was employed by Hy-Vee beginning July 21, 2011 as a full-time warehouse worker. He was arrested by Cherokee, Iowa, police officers on January 24, 2013, and charged with domestic assault, possession of controlled substances and possession of drug paraphernalia. He entered a plea of not guilty. The criminal charges have not yet been resolved.

On January 31, 2013, Assistant Vice President of Distribution Lisa Stowater suspended him pending the resolution of the criminal charges. The charges did not arise out of any conduct on company property or company time. The employer considered the arrest alone to be a violation of the code of conduct.

**REASONING AND CONCLUSIONS OF LAW:**

Iowa Code section 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.

871 IAC 24.32(9) provides:

(9) Suspension or disciplinary layoff. Whenever a claim is filed and the reason for the claimant's unemployment is the result of a disciplinary layoff or suspension imposed by the employer, the claimant is considered as discharged, and the issue of misconduct must be resolved. Alleged misconduct or dishonesty without corroboration is not sufficient to result in disqualification.

The claimant has not been discharged but only suspended pending the outcome of the criminal charges. The above Administrative Code section equates suspension for misconduct with discharge for misconduct. It must therefore be determined whether the claimant was guilty of substantial, job-related misconduct.

Merely being arrested on charges which have been denied is not evidence of misconduct. The arrest did not arise out of any conduct on company property or on company time. It cannot therefore be considered job-related misconduct sufficient to warrant a denial of unemployment benefits as the employer does not have any specific policy regarding off-duty actions. Disqualification may not be imposed.

**DECISION:**

The representative's decision of March 6, 2013, reference 01, is reversed. Luciano Gonzalez is qualified for benefits, provided he is otherwise eligible.

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Bonny G. Hendricksmeyer  
Administrative Law Judge

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Decision Dated and Mailed

bgh/pjs