

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JESSICA M GLASPEY
Claimant

APPEAL NO. 14A-UI-00074-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

MAINSTREAM LIVING INC
Employer

**OC: 12/08/13
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Mainstream Living (employer) appealed a representative's December 31, 2013, decision (reference 01) that concluded Jessica Glaspey (claimant) was discharged and there was no evidence of willful or deliberate misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for February 5, 2014. The claimant participated personally and through Lawrence Gavigan, a former co-worker. The employer participated by Marcanne Lynch, Human Resources Manager; Jim Fox, Director of Mental Health Services; and Bryon Little, Supported Living Technician. The employer offered and Exhibits One, Two, Three, Four, Five, Six, Seven, Eight, Nine, Eleven, and Twelve were received into evidence.

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 January 14, 2013, as a full-time supported living technician. The claimant signed for receipt of the employer's handbook on January 14, 2013. The handbook indicates that employees are supposed to immediately report any arrests, citation or abuse allegations to the employer. The employer issued the claimant some counselings on June 27, July 1, July 25, 2013, for productivity, documentation, and billable hour issues. On October 30, 2013, the employer issued the claimant a written warning for making inappropriate comments. The employer notified the claimant that further infractions could result in termination from employment.

On June 7, 2013, the claimant and other co-workers went to a bar after work time. The group was inebriated and one of the co-workers started video recording after a female pushed the claimant. On the recording the claimant pushed back and the two females engaged in an unclear altercation. At some point the claimant hit a male. The male hit the claimant prior to filming. The male took the claimant's purse from her and the claimant had to pull on the purse to retrieve it from the male. The strap was around the male's neck. Someone put the recording

on social media. The employer became aware of the recording on December 9, 2013, and terminated the claimant.

The claimant filed for unemployment insurance benefits with an effective date of December 8, 2013. She received \$2,088.00 in benefits after the separation from employment. The employer participated personally at the fact-finding interview on December 27, 2013, by Marcanne Lynch.

REASONING AND CONCLUSIONS OF LAW:

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

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(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.

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). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). Off-duty conduct must be "work related" if it is to be grounds for discharge and disqualification for misconduct. That is, it must have a direct, negative effect on the employer. Diggs v. Employment Appeal Board, 478 N.W.2d 432 (Iowa App. 1991). In order for an employer to show that its employee's off-duty activities rise to the level of

misconduct in connection with the employment, the employer must show by a preponderance of the evidence:

[T]hat the employee's conduct (1) had some nexus with the work; (2) resulted in some harm to the employer's interest, and (3) was in fact conduct which was (a) violative of some code of behavior impliedly contracted between employer and employee, and (b) done with intent or knowledge that the employer's interest would suffer.

In this case the employer has not proven any of the elements listed above. It is clear that the claimant did not use good judgment and that her judgment most certainly was impaired. It is also clear that the employer has cause for concern but the administrative law judge was not presented with a specific code of behavior that prohibits this type of off-duty conduct. The claimant is eligible to receive unemployment insurance benefits.

DECISION:

The representative's December 31, 2013, decision (reference 01) is affirmed. The employer has not met its proof to establish job-related misconduct. Benefits are allowed.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/css