

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARVELLA LINDSEY
Claimant

APPEAL NO. 11A-UI-10399-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

AEL INC
Employer

OC: 06-26-11
Claimant: Appellant (2)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the August 5, 2011, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on September 1, 2011. The claimant participated in the hearing. Alicia Loughran, owner, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time lead teacher for Hundred Acre Woods from March 1, 2010 to June 26, 2011. The claimant indicated on her application that she had previous criminal charges including possession of marijuana several years ago and an assault causing bodily injury, assault causing personal injury and a riot charge six years earlier, all to which she pled guilty. After a change in Iowa law, the employer was required to fingerprint all employees by its licensing date in October 2011. The employer fingerprinted the claimant in the spring of 2011 and the records eventually were sent to the Department of Human Services (DHS), which then required the claimant to complete an evaluation describing her previous charges. There were no allegations of child or dependent adult abuse on her record. The claimant did not receive the evaluation form from DHS, which was to be returned to DHS within ten days. DHS notified the employer the claimant did not return her evaluation and when the claimant returned from vacation she was informed her employment was terminated because DHS said she could not return to work due to her criminal record. The claimant contacted DHS but was told to call the employer and when she called the employer she was referred to DHS. The claimant eventually gave up on the process and filed a claim for unemployment insurance benefits.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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 proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000). The claimant disclosed her prior criminal charges on her application for employment and had not incurred any new charges during her employment. While DHS questioned her criminal record after she supplied her fingerprints in compliance with new Iowa law, the claimant never received the evaluation form required to be completed before she could return to work. The claimant made a good-faith effort to find out what she needed to do to get her job back, but neither DHS nor the employer could provide her with that information and it is not clear whether she would have been prohibited from working had she been able to receive a copy of the evaluation, complete it, and return it to DHS. Under these circumstances, the administrative law judge must conclude that the employer has not established any act of misconduct on the part of the claimant as required to meet the burden of disqualifying job misconduct. Therefore, benefits are allowed.

DECISION:

The August 5, 2011, reference 01, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/kjw