

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**BRIAN M KEENEY**  
Claimant

**OZARK AUTOMOTIVE DISTRIBUTORS INC**  
Employer

**APPEAL 16A-UI-05593-DB-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 04/17/16**  
**Claimant: Respondent (1)**

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Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Code § 96.5(1) – Voluntary Quitting  
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment  
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation in Fact-finding Interviews

**STATEMENT OF THE CASE:**

The employer/appellant filed an appeal from the May 11, 2016 (reference 01) unemployment insurance decision that allowed benefits based upon claimant's discharge from work without sufficient evidence of job-related misconduct. The parties were properly notified of the hearing. A telephone hearing was held on June 6, 2016. The claimant, Brian M. Keeney, did not participate. The employer, Ozark Automotive Distributors Inc., participated through Human Resources Supervisor Doug Singleton and Criminal Background Check Coordinator Larry Herron. Employer's Exhibits 1 through 7 were admitted.

**ISSUES:**

Was the claimant discharged for disqualifying job-related misconduct?  
Did claimant voluntarily quit the employment with good cause attributable to employer?  
Has the claimant been overpaid any unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?  
Can any charges to the employer's account be waived?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a material handler from April 15, 2009 until May 24, 2016. Claimant worked in the warehouse and filled orders by putting the correct materials in boxes for shipping. He did not have contact with customers as part of his job duties.

On April 13, 2016 claimant was involved in an incident at his residence. See Exhibit 7. He was arrested and charged with child endangerment, domestic abuse assault, and assault. See Exhibit 6. Claimant notified his supervisor of his arrest. Claimant was using his accrued vacation time from work when this incident occurred. Once the employer was notified of claimant's arrest and the pending charges he was put on unpaid suspension pursuant to the employer's policy. See Exhibit 3. Employer has a written policy which states that conviction or currently pending charges for violation of a criminal law which would disqualify the Team

Member from employment with O'Reilly is a violation of the Rules of Conduct which may result in discipline or discharge. See Exhibit 3.

Claimant pled guilty to child endangerment and domestic abuse assault on May 24, 2016. See Exhibit 4. Claimant received a deferred judgment. See Exhibit 4. The employer became aware of claimant's guilty plea and discharged claimant from employment on the same date. The two offenses that claimant pled guilty of were included as offenses which would disqualify claimant from employment according to employer's own policy. That list of offenses is not made available to any employees, including the claimant.

There were no complaints or concerns raised from co-workers regarding claimant's pending charges. Employer discharged claimant because it believed that continuing to employ claimant would result in damage to the employer's brand and reputation.

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

For the reasons that follow, the administrative law judge concludes Claimant was discharged from employment for no disqualifying reason. Benefits are allowed.

As a preliminary matter, I find that claimant did not quit. He was discharged from employment.

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(4) provides:

(4) Report required. The claimant's statement and the employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

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.

Further, the employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988).

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 Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986).

A claimant can be disqualified for benefits when their off duty conduct is a violation of a specific work rule. *Kleidosty v. Emp't Appeal Bd.*, 482 N.W.2d 416 (Iowa 1992). The misconduct must be 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. 871 Iowa Admin. Code r. 24.32(1). Under similar definitions of misconduct, for an employer to show that the 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 that the employee's conduct (1) had some nexus with the work; (2) resulted in some harm to the employer's interest, and (3) was 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. See also *Dray v. Director*, 930 S.W.2d 390 (Ark. Ct. App. 1996); *In re Kotrba*, 418 N.W.2d 313 (S.D. 1988), quoting *Nelson v. Dept. of Emp't Security*, 655 P.2d 242 (Wash. 1982). While discharge for misconduct must be in connection with the individual's employment, code provisions which operate to work a forfeiture of benefits are strongly construed in favor of the claimant. *Budding v. Iowa Dep't of Job Serv.*, 337 N.W.2d 219, 222 (Iowa App.1983), overruled on other grounds by *Myers v. Employment Appeal Bd.*, 462 N.W.2d 734, 738 (Iowa App.1990).

Here, the specific rule states that an employee may be subject to discharge if there is a conviction or currently pending charges for violation of a criminal law which would disqualify the Team Member from employment with O'Reilly. The rule is too broad and does not include any provision which links the employee's conduct to their job.

Claimant was discharged solely because he pled guilty to and received a deferred judgment for two criminal charges which occurred off duty and away from company property. In order to disqualify him from benefits the employer must show that he committed a current act of misconduct. Further, discharge for misconduct must be *in connection with the individual's employment*. Iowa Code § 96.5(2). The misconduct which resulted in the claimant's discharge was an incident which occurred off company premises and off company time. There was no evidence that this incident created any harm to the employer's interests. There was no evidence that it was reported in the newspaper or on television. Claimant was on paid vacation leave at his own residence when this occurred. He did not miss any work due to the arrest. He was on unpaid suspension thereafter and therefore did not miss work due to any of the legal proceedings or court appearances. There is no evidence that it caused any disruption in the workplace. See *Diggs v. Emp't Appeal Bd.*, 478 N.W.2d 432 (Iowa Ct. App. 1991).

In an at-will employment environment 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, it incurs potential liability for unemployment insurance benefits related to that separation. While the employer may have been justified in discharging claimant, work-connected misconduct as defined by the unemployment insurance law has not been established in this case. Nothing in this decision should be interpreted as a condemnation of the employer's right to discharge claimant. The employer had a right to make business decisions as it determined were in its best interests. The analysis of unemployment insurance eligibility however, does not end there. Although the conduct that led to the guilty plea may have been a reasonable reason to sever the employment relationship, it does not rise to the level of work connectedness with this employer required to disqualify claimant from receiving benefits. The employer has failed to meet its burden of proof of establishing a current act of job-related misconduct. As such, benefits are allowed. Because benefits are allowed there is no issue of overpayment of benefits.

**DECISION:**

The May 11, 2016, (reference 01) unemployment insurance decision is affirmed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible.

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Dawn Boucher  
Administrative Law Judge

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Decision Dated and Mailed

db/pjs