

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**LAWRENCE J BAUER**  
Claimant

**HOPE HAVEN INC**  
Employer

**APPEAL 17A-UI-13421-JP-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 12/03/17**  
**Claimant: Respondent (1)**

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

**STATEMENT OF THE CASE:**

The employer filed an appeal from the December 22, 2017, (reference 01) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on January 23, 2018. Claimant participated. Employer participated through director of community living services Leann Blau. Official notice was taken of the administrative record, including claimant's benefit payment history, with no objection.

**ISSUES:**

Was the claimant discharged for disqualifying job-related misconduct?

Has the claimant been overpaid unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?

Can 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 direct support professional from October 29, 2015, and was separated from employment on November 9, 2017, when he was discharged.

On October 31, 2017, claimant was arrested and subsequently charged with a felony, sexual abuse in the third degree. The alleged incident occurred while claimant was off duty. Around October 31, 2017 or November 1, 2017, claimant had his mother contact the employer to inform it that he was unable to come to work because he had been arrested. Claimant's mother contacted Dawn, the head of the Spencer office, and claimant's direct supervisor. Claimant was in jail from October 31, 2017 until November 14, 2017, when he posted bail and was released.

On November 2, 2017, the employer sent claimant a letter informing him that based on his pending criminal charge he was being placed on an unpaid suspension. The employer

instructed claimant to contact the employer once he was released from jail for further discussion. Claimant's mother informed him around November 9, 2017 about the employer's November 2, 2017 letter. From November 2, 2017 through November 9, 2017, claimant was in jail and did not contact the employer.

On November 9, 2017, the employer sent claimant a letter informing him that he was discharged due to his pending criminal charge. On November 14, 2017, claimant received the employer's letter dated November 9, 2017. Claimant did not contact the employer after he was released from jail on November 14, 2017 because he had been discharged.

Prior to November 14, 2017, claimant entered a plea of not guilty to the charge of sexual abuse in the third degree. The criminal charge is still pending.

### **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.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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).

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. A determination as to whether an employee's act is misconduct does not rest solely on the interpretation or application of the employer's policy or rule. A violation is not necessarily disqualifying misconduct even if the employer was fully within its rights to impose discipline up to or including discharge for the incident under its policy.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5(2)a. The rules define misconduct "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." Iowa Admin. Code r. 871-24.32(1)(a). The rules further define disqualifying misconduct "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." Iowa Admin. Code r. 871-24.32(1)(a). However, "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." Iowa Admin. Code r. 871-24.32(1)(a).

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). Whether the discharge was warranted is not at issue in an unemployment insurance case. 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. 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. Emp't Appeal Bd.*, 616 N.W.2d 661, 665 (Iowa 2000).

The administrative law judge understands that the employer may be in an untenable situation when an employee is charged with sexual abuse in the third degree, because there may not be a quick resolution to the criminal charge. The administrative law judge also understands that the employer may be precluded from allowing claimant to work while the criminal charge is pending. Although claimant may have been precluded from working for the employer while his criminal charge is pending, disqualifying conduct cannot be predicated on a mere arrest unsupported by a conviction or other credible evidence of the claimant's intentional conduct. *Irving v. Emp't Appeal Bd.*, 883 N.W.2d 179 (Iowa 2016)(citing *In re Benjamin*, 572 N.Y.S.2d 970, 972 (App. Div. 1991)(per curiam)). Claimant pled not guilty to the criminal charge and the criminal charge is still pending. Furthermore, Ms. Blau testified claimant was not discharged for absenteeism, but was discharged due to the nature of his criminal charge. 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. However, the analysis for unemployment insurance eligibility does not end there. This ruling simply holds that the employer did not meet its burden of proof to establish claimant's conduct leading to separation was work-connected and disqualifying job misconduct. Benefits are allowed.

As benefits are allowed, the issues of overpayment, repayment, and the chargeability of the employer's account are moot.

**DECISION:**

The December 22, 2017, (reference 01) unemployment insurance decision is affirmed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided claimant is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

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Jeremy Peterson  
Administrative Law Judge

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Decision Dated and Mailed

jp/rvs