

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LORRIE ROUSE
Claimant

APPEAL NO: 13A-UI-09864-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

BLACK HAWK COUNTY
Employer

OC: 08-04-13
Claimant: Appellant (2)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the August 23, 2013, 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 October 2, 2013. The claimant participated in the hearing. Jerry Clyde, Director of Human Resources and Audra Heineman, Human Resources Generalist, 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 home health aide for Black Hawk County Health Department from May 2, 1996 to August 5, 2013. She was discharged after being charged and accepting a plea bargain for a non-work-related incident that occurred November 8, 2012.

The claimant pled guilty to disorderly conduct after she reported to the Waterloo Police Department some of her tools were missing November 8, 2012, following a breaking up with her boyfriend. She went to the police station November 18, 2012, and while her ex-boyfriend was speaking with police he accused the claimant of domestic abuse and she was arrested, charged and jailed overnight. She called her supervisor November 19, 2012, and reported the incident and explained the situation. She returned to work November 20, 2012, and continued working, because the employer correctly ascertained this was not a work related incident and it had no grounds to proceed with an investigation. The employer was obligated, however, to notify the Department of Human Services (DHS) and it began an investigation. The claimant worked until August 2, 2013, at which time the employer was notified by DHS it could no longer employ her because she pled guilty to disorderly conduct and received a deferred judgment June 25, 2013. She would have preferred to go to trial but could not afford to pay an attorney to do so and made too much money to qualify for a court-appointed attorney. She believes the disorderly

conduct stemmed from a complaint that because she has teenage children her house was too loud. The employer had no choice but to terminate the claimant's employment following DHS' directive and the employer notified the claimant she was discharged August 5, 2013.

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.

871 IAC 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.

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).

In this case the employer agrees the incident the claimant was charged with and pled guilty to with a deferred judgment was not work-related in any manner. Additionally, the incident occurred on approximately November 8, 2012, and the employer was notified immediately after the claimant was charged and briefly jailed November 18, 2012. Consequently, this was not a current act of misconduct as nine months passed, during which time the employer was aware of the situation but took no disciplinary action, again because it realized it was not a work-related situation, before termination occurred. While DHS told the employer the claimant could no longer work there, and the employer had no choice but to terminate the claimant's employment, the employer has not established that the incident was a job-related or a current act of misconduct. Therefore, even though the employer had no choice but to terminate the claimant's employment, it has not met its burden of proving disqualifying job misconduct as that term is defined by Iowa law. (Emphasis added). Therefore, benefits must be allowed.

DECISION:

The August 23, 2013, 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/pjs