

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BYRON FIRST
Claimant

APPEAL NO: 14A-UI-09468-E

**AMENDED
ADMINISTRATIVE LAW JUDGE
DECISION**

REM IOWA COMMUNITY SERVICES INC
Employer

**OC: 08/10/14
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the September 4, 2014, reference 02, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held in Cedar Rapids, Iowa, before Administrative Law Judge Julie Elder on December 2, 2014. The claimant participated in the hearing with Attorney Todd Schmidt. Matt Hidlebaugh, Area Director, participated in the hearing on behalf of the employer. Claimant's Exhibits A and B and Employer's Exhibit One were admitted into evidence.

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 direct support professional for REM Iowa Community Services from October 11, 2011 to August 11, 2014. He was discharged after pleading guilty to an OWI.

The claimant was charged with an OWI first March 29, 2014, on his personal time. He reported his arrest to the employer within 24 hours. He was on Family and Medical Leave (FML) from April 8 through June 1, 2014, for an unrelated medical condition.

On May 27, 2014, the employer notified the claimant he needed to complete paperwork for Department of Human Services (DHS) so it could complete another background check due to his arrest. He was not allowed to return to work after being released following his FML June 1, 2014, because DHS had not made its determination of whether the claimant could continue his employment due to the fact he was arrested for OWI.

On July 24, 2014, the claimant pled guilty to the OWI charge. On July 29, 2014, DHS notified the employer it could no longer continue to employ the claimant following the background check it requested and reviewed. The only addition to the background information since the claimant's

initial background check at the time of his hire was the March 29, 2014, first offense OWI. The employer is funded by Medicaid and must follow DHS/Medicaid rules. Consequently, the employer had no choice but to terminate the claimant's employment following the DHS ruling, which the claimant is appealing.

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.

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).

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).

“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. IDJS, 391 N.W.2d 731 (Iowa App. 1986).

In Tarver v. Ross, 64 App.Div.2d 760, 406 N.Y.S.2d 928 (1978) the Court found that while the claimant’s checking account was overdrawn, his actions were not determined to have impacted his job performance with the bank that employed him.

Violation of a specific work rule, even off-duty, can constitute misconduct. In Kleidosty v. EAB, 482 N.W.2d 416, 418 (Iowa 1992), the employer had a specific rule prohibiting immoral and illegal conduct. The worker was convicted of selling cocaine off the employer’s premises. The Court found misconduct. In its analysis, the Court stressed the importance of a specific policy, even one which was stated only in terms of illegal or immoral conduct.

The grounds for discharge listed under a contract of hire are irrelevant to determination of eligibility for Job Service benefits in a misconduct situation. Hurtado v IDJS, 393 N.W.2d 309 (Iowa 1986).

In order for an incident to be a disqualifying event, it must be work related. The claimant’s OWI charge in this case was incurred after work hours and had no connection to his employment. There are no allegations or any evidence suggesting the claimant committed any misconduct in the performance of his job duties as a direct support professional or that his OWI guilty plea had any impact on his position with the employer. The employer is governed by DHS/Medicaid rules and after DHS conducted another background check on the claimant following his OWI charge, the employer was notified it could no longer employ the claimant. The administrative law judge recognizes that the employer is effectively caught in the middle of this situation with an employee who did not commit work-related misconduct and a decision connected to its governing and funding source stating the claimant could no longer continue his employment with the employer. Under these circumstances, however, the administrative law judge must conclude the claimant’s OWI was not work-related misconduct as that term is defined by Iowa law. Therefore, benefits must be allowed.

DECISION:

The September 4, 2014, reference 02, decision is affirmed. 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/can/css

