

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JENNIFER HANSON
Claimant

APPEAL NO: 10A-UI-07620-B

**ADMINISTRATIVE LAW JUDGE
DECISION**

JOLAS & ASSOCIATES LLP
Employer

OC: 04/18/10
Claimant: Appellant (2)

Iowa Code § 96.5(2)(a) - Discharge for Misconduct
871 IAC 24.32 (9) - Suspension/Disciplinary Layoff

STATEMENT OF THE CASE:

Jennifer Hanson (claimant) appealed an unemployment insurance decision dated May 13, 2010, reference 01, which held that she was not eligible for unemployment insurance benefits because she was placed on disciplinary suspension (employer) for work-related misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a hearing was held in Mason City, Iowa on July 30, 2010. The claimant participated in the hearing. The employer participated through Kelli Sheehy, Office Manager. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

The issue is whether the employer suspended the claimant for work-related misconduct?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired as a full-time collection representative on April 7, 2009. She was placed on a disciplinary suspension on April 18, 2009 because she has felony criminal charges pending for assault. The employer suspended her while awaiting the outcome of the charges. The employer does not have a policy regarding an employee's off-duty conduct.

The claimant's job duties may require her to call different states and New York prohibits employees from calling its state with regard to collections if the employee has a criminal background. However, the claimant's job duties did not yet involve calling New York though.

REASONING AND CONCLUSIONS OF LAW:

The issue to be determined in this matter is whether the claimant's disciplinary suspension and subsequent termination were for disqualifying reasons. When an individual is unemployed as a result of a disciplinary suspension imposed by the employer, the individual is considered to have been discharged and the issue of misconduct must be resolved. See 871 IAC 24.32(9). An

individual who was discharged or suspended for misconduct is disqualified from receiving job insurance benefits. See Iowa Code § 96.5-2-a. In order for a suspension to be a disqualifying event, the evidence must establish See 871 IAC 24.32(9). Misconduct is defined as deliberate actions contrary to the employer's interest. See 871 IAC 24.32(1).

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.

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 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). 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).

When misconduct is alleged as the reason for a suspension and discharge resulting in a subsequent disqualification of benefits, it is incumbent upon the employer to present evidence in support of its allegations. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. 871 IAC 24.32(4). The employer did not provide sufficient evidence to result in disqualification. The evidence provided by the claimant confirms that her suspension was based on a matter unrelated to her employment.

Work-connected misconduct as defined by the unemployment insurance law has not been established in this case and benefits are allowed.

DECISION:

The unemployment insurance decision dated May 13, 2010, reference 01, is reversed. The claimant was discharged. Misconduct has not been established. Benefits are allowed, provided the claimant is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/css