

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

OCTAVIA M REDD

Claimant

APPEAL NO. 11A-UI-16573-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

SEARS ROEBUCK & COMPANY

Employer

OC: 11/27/11

Claimant: Respondent (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Sears Roebuck & Company (employer) appealed a representative's December 23, 2011 decision (reference 01) that concluded Octavia Redd (claimant) was discharged and there was no evidence of willful or deliberate misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for January 26, 2012. The claimant participated personally. The employer participated by Justin Crick, Human Resources Manager.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

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 on October 11, 2010, as a full-time associate. The claimant signed for receipt of the employer's handbook on October 11, 2010. The employer has a policy which indicates that any arrest or conviction should be reported to the employer within five days of the event. On July 15, 2011, the employer issued the claimant a verbal warning for attendance.

The claimant was on vacation from November 9 through November 17, 2011. While on vacation the claimant was arrested and incarcerated for driving with a suspended license. She was unable to reach the employer while incarcerated because the employer's answering system did not allow for collect calls. The claimant instructed her daughter to call the employer and report the arrest. The adult daughter notified the employer on November 14, 2011, of the arrest. The employer understood that the claimant had a court date on November 18, 2011, and could not return to work on that day. The employer instructed the daughter to tell her mother to return to work on November 19, 2011.

The claimant returned to work on November 19, 2011, and reported that she pled guilty on November 18, 2011. The employer suspended the claimant pending investigation. On

November 30, 2011, the employer terminated the claimant for failure to notify the employer within five days of the claimant's arrest.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

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 of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). 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 Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). The employer did not provide sufficient evidence of job-related misconduct. The claimant followed the handbook instructions as best she could. The employer was notified within five days of the arrest. The employer did not meet its burden of proof to show misconduct. Benefits are allowed.

DECISION:

The representative's December 23, 2011 decision (reference 01) is affirmed. The employer has not met its proof to establish job related misconduct. Benefits are allowed.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/pjs