

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**COLLEEN R COPELAND**  
Claimant

**APPEAL NO. 13A-UI-08931-LT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**FAMILY TABLE OF IDA GROVE LTD**  
Employer

**OC: 07/07/13**  
**Claimant: Appellant (1)**

Iowa Code § 96.5(2)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the July 31, 2013, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on September 9, 2013. Claimant participated with her spouse, Stephen Copeland. Employer participated through owner/operator, Eric Zimmerman.

**ISSUE:**

Was the claimant discharged for disqualifying job-related misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a cook and was separated from employment on July 3, 2013. She was incarcerated on July 3 through 7, 2013. Her husband called Zimmerman to report her absence due to incarceration after she failed a urine test on July 2, when she went to get an ankle bracelet for home arrest with work release. When she was caught with drugs and/or drug paraphernalia in April 2013, Zimmerman warned her he would not put up with it, she must be honest with him, and she would be fired if she was caught using drugs again.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant did not quit but was discharged from employment due to job-related misconduct.

Iowa Code § 96.5-1 provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

871 IAC 24.25(16) provides:

Voluntary quit without good cause. In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code § 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code § 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(16) The claimant is deemed to have left if such claimant becomes incarcerated.

In the context of the Iowa Employment Security Law, an individual who separates from employment because of incarceration is presumed to have quit without good cause attributable to the employer. See, Iowa Admin. Code r. 871-24.25(16). The claimant's incarceration on multiple scheduled workdays was not a good-cause reason for the separation attributable to the employer based upon a voluntary leaving of employment. Even had the employer not fired the claimant but considered the absences as a voluntary leaving of employment, it would be considered a disqualifying separation without good cause attributable to the employer as an employer is not expected to hold employment for incarcerated employees regardless of prior warning or attendance history. Since both parties agree claimant was discharged and did not voluntarily leave the employment, the separation will be decided on that basis.

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.

Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990). Consumption of alcohol on the job following warning constitutes job misconduct where claimant checked into an alcohol abuse program after the discharge and stopped drinking showing his actions were volitional. *Ayersman v. Iowa Dep't of Job Serv.*, 417 N.W.2d 466 (Iowa 1988).

The record contains substantial and credible evidence that claimant was incarcerated due to an admitted positive urine drug test after having been warned in April 2013, to be honest with him and not to use drugs again or face discharge. She relapsed on July 1, but did not tell Zimmerman on July 1 or 2, before reporting for the urinalysis after work on July 2. Claimant's failure to be honest with Zimmerman and her admitted use of drugs again after having been warned is misconduct. Benefits are denied.

**DECISION:**

The July 31, 2013, (reference 01) decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

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Dévon M. Lewis  
Administrative Law Judge

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Decision Dated and Mailed

dml/css