

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JODY R CHESSHIRE

Claimant

APPEAL NO. 12A-UI-10869-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

JACOBSON STAFFING COMPANY LC

Employer

OC: 07/22/12

Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the August 28, 2012 (reference 02) decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call on October 3, 2012. Claimant participated. Employer responded to the hearing notice instructions but was not available when the hearing was called and did not participate. Claimant's Exhibit A was received.

ISSUE:

Was the claimant discharged for reasons related to disqualifying job misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed temporary full-time as a warehouse laborer assigned at Jacobson's Warehouse and was separated from employment on July 18, 2012 before the end of the work day by telephone message. Her last day of work was July 17. She was arrested the evening of July 17 after she was beaten by a coworker she was dating. She was released the morning of July 18 and went straight to the hospital without calling the employer because she had a head injury (concussion) and was under the influence of pain medications. The coworker was not discharged. She reported to work on July 19 and she was not allowed inside because she created a hostile work environment. The criminal charges against her were dismissed but his were not.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason.

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 Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988). 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 Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984).

In an at-will employment environment, an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy; but, if it fails to meet its burden of proof to establish job-related misconduct as the reason for the separation, employer incurs potential liability for unemployment insurance benefits related to that separation. Since the coworker claimant was dating, who was also involved in the altercation, was not discharged, benefits cannot be denied based upon disparate application of discipline. Benefits are allowed.

DECISION:

The August 28, 2012 (reference 02) decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed. The benefits withheld shall be paid, provided she is otherwise eligible.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/kjw