

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**JUSTIN C NELSON**  
Claimant

**IA DEPT OF CORRECTIONS-NEWTON**  
Employer

**APPEAL 17A-UI-05693-JCT**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 05/07/17**  
**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the May 23, 2017, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on June 16, 2017. The claimant participated personally. The employer participated through Steven Zaks, hearing representative. Darrell Morris, captain, testified for the employer.

The administrative law judge took official notice of the administrative records including the fact-finding documents. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**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: The claimant was employed full-time as a corrections officer and was separated from employment on May 4, 2017, when he was discharged. The claimant last performed work on April 9, 2017, before being placed on a paid, administrative leave of absence until his discharge.

At the time of hire, and throughout his employment, the claimant was made aware of the employer's policies and rules, by way of handbook and e-learning courses. Amongst the employer policies are that employees are expected to conduct themselves, even off duty, in a way that is not detrimental or adversely impact or represent the employer, and a duty to obey all local, state and federal laws. The claimant was aware that conduct off-duty could impact his employment status at the department of corrections.

The final incident occurred on April 10, 2017, while the claimant was off-duty, in Monroe, Iowa. After having dinner and becoming intoxicated, the claimant was involved in a physical

altercation with a co-worker named Stephanie. Stephanie worked as a nurse at the same facility as the claimant and also was his ex-wife. During the altercation, the claimant admitted to being "drunk and irritated" with her, and grabbed her by the hair to remove her from the bathroom. During the exchange, Stephanie fell and hit her head on the towel rack, requiring stitches. The claimant was arrested and charged with aggravated domestic assault. The employer did not discharge the claimant based on the charges or disposition of criminal charges, but rather due to his violating the employer's policies regarding off-duty conduct. To date, the claimant's charges are unresolved and he has court on July 19, 2017.

Upon release from jail, the claimant immediately reported his arrest to the warden, as required by employer rules. He was then placed on a paid, administrative suspension while an investigation was conducted. During the investigation conducted by Captain Morris, the claimant and Stephanie were both interviewed and the police report was reviewed. The claimant admitted to grabbing the hair of Stephanie during the altercation. While Stephanie was a nurse, and not corrections officer, the claimant worked the same shift with her, and would be unable to avoid interactions with her at the workplace. Upon completion of the investigation, the employer discharged the claimant.

#### **REASONINGS AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment due to job-related 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.

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 is the meaning which has been given the term in other jurisdictions under similar statutes, and we believe it accurately reflects the intent of the legislature." *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d, 445, 448 (Iowa 1979).

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, it incurs potential liability for unemployment insurance benefits related to that separation. 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). 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. IDJS*, 364 N.W.2d 262 (Iowa 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. IDJS*, 425 N.W.2d 679 (Iowa 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 Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984).

This case rests on the credibility of the parties. It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). Administrative agencies are not bound by the technical rules of evidence. *IBP, Inc. v. Al-Gharib*, 604 N.W.2d 621, 630 (Iowa 2000). A decision may be based upon evidence that would ordinarily be deemed inadmissible under the rules of evidence, as long as the evidence is not immaterial or irrelevant. *Clark v. Iowa Dep't of Revenue*, 644 N.W.2d 310, 320 (Iowa 2002). Hearsay evidence is admissible at administrative hearings and may constitute substantial evidence. *Gaskey v. Iowa Dep't of Transp.*, 537 N.W.2d 695, 698 (Iowa 1995). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.* Assessing the credibility of the witnesses and reliability of the evidence in conjunction with the applicable burden of proof, as shown in the factual conclusions reached in the above-noted findings of fact, the administrative law judge concludes that the administrative law judge concludes that the employer has satisfied its burden to establish by a preponderance of the evidence that the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

Under the definition of misconduct for purposes of unemployment benefit disqualification, the conduct in question must be "work-connected." *Diggs v. Emp't Appeal Bd.*, 478 N.W.2d 432 (Iowa Ct. App. 1991). The court has concluded that some off-duty conduct can have the requisite element of work connection. *Kleidosty v. Emp't Appeal Bd.*, 482 N.W.2d 416, 418 (Iowa 1992). Under similar definitions of misconduct, for an employer to show that the employee's off-duty activities rise to the level of misconduct in connection with the employment, the employer must show by a preponderance of the evidence that the employee's conduct (1) had some nexus with the work; (2) resulted in some harm to the employer's interest, and (3) was conduct which was (a) violative of some code of behavior impliedly contracted between

employer and employee, and (b) done with intent or knowledge that the employer's interest would suffer. See also, *Dray v. Director*, 930 S.W.2d 390 (Ark. Ct. App. 1996); *In re Kotrba*, 418 N.W.2d 313 (SD 1988), quoting *Nelson v. Dept of Emp't Security*, 655 P.2d 242 (WA 1982); 76 Am. Jur. 2d, Unemployment Compensation §§ 77–78.

Based on the evidence presented, the claimant's off-duty actions on April 10, 2017, in which he pulled the hair of a co-worker/his ex-wife during an altercation, resulting in her falling and hitting her head which required stitches, had a direct nexus to the work he performed, inasmuch as the claimant worked during the same shift and would have to interact with his co-worker, Stephanie, whom he had assaulted. Regardless of the disposition of the charges, and the fact the claimant's job duties, the claimant physically assaulted a co-worker, while he was intoxicated and irritated with her. The claimant admitted to the conduct when interviewed by the employer and no evidence was presented that the claimant's actions were due to imminent harm or even in self-defense.

The employer has presented substantial and credible evidence that claimant violated the reasonable expectations of the Iowa Department of Corrections by physically assaulting his co-worker off-duty. The administrative law judge is persuaded the claimant knew or should have known his conduct was contrary to the best interests of the employer. Therefore, based on the evidence presented, the claimant was discharged for misconduct, even without prior warning. Benefits are denied.

**DECISION:**

The May 23, 2017, (reference 01) decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

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Jennifer L. Beckman  
Administrative Law Judge

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Decision Dated and Mailed

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