

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

KIMBERLY L BREWER
Claimant

APPEAL 19A-UI-02497-DG-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

LEXINGTON SQUARE LLC
Employer

**OC: 02/24/19
Claimant: Appellant (2)**

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

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated March 14, 2019, (reference 01) that held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on April 9, 2019. Claimant participated personally. Employer participated by Caylie Cherry, Human Resources Assistant.

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 an activities aid and was separated from employment on January 28, 2019.

Claimant was charged with operating a motor vehicle while intoxicated on December 13, 2018. Claimant was not at work or on the way to work, and she was not operating a company vehicle during the incident. Claimant entered a guilty plea to operating a motor vehicle while intoxicated, 1st offense on January 16, 2019. The Court accepted claimant's plea and judgment was withheld by the Court.

Claimant reported what had happened to employer, and employer cooperated with the Iowa Department of Human Services (hereinafter DHS). DHS conducted an investigation and notified employer that it would make a final determination once a final criminal record check was conducted by that department.

On January 28, 2019, the employer terminated the claimant's employment because it received a letter from (DHS) informing the employer that the claimant could no longer work at the employer's facility based on a record check evaluation.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge (ALJ) concludes the claimant was not discharged for work-connected misconduct.

Iowa Code section 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 definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

Iowa Admin. Code r. 871-24.32(4) provides:

(4) *Report required.* The claimant's statement and employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

The Iowa Code includes a number of chapters¹ which require the termination of an employee based on a record check evaluation performed by the Department of Human Services (DHS). Based on its evaluation, DHS has the sole authority under the Code to determine whether the employee can remain in the job. A record check evaluation includes a review of criminal records and founded abuse information in the child abuse registry², the dependent adult abuse registry³ or both. The Code requires abuse information from the registries to be kept confidential and prohibits re-dissemination of that information.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5(2)a. The rules define misconduct as deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the

¹ See, e.g., Iowa Code chapters 135C, 135H, 237A

² Iowa Code § 235A.14

³ Iowa Code § 235B.5

contract of employment, deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. Iowa Admin. Code r. 871-24.32(1).

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). Whether the discharge was warranted 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. Emp't Appeal Bd.*, 616 N.W.2d 661, 665 (Iowa 2000).

The administrative law judge understands both parties are in an untenable situation, and the employer cannot simply ignore information provided by DHS. However, the employer has the burden of proof in discharge cases. While the employer may have been justified in terminating the claimant, work-connected misconduct as defined by the unemployment insurance law has not been established. No willful work-related misconduct or repeated negligence has been proven in this case.

DECISION:

The unemployment insurance decision dated March 14, 2019, (reference 01) is reversed. Claimant is eligible to receive unemployment insurance benefits, provided claimant meets all other eligibility requirements. The benefits withheld based upon this separation shall be paid to claimant.

Duane L. Golden
Administrative Law Judge

Decision Dated and Mailed

dlg/scn