

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

JOSE R JAIMES
Claimant

WELLS ENTERPRISES INC
Employer

APPEAL 15A-UI-04766-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 12/14/14
Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the April 9, 2015, (reference 02) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on May 29, 2015. Claimant participated. Employer participated through Mark McCarty, Human Resources Business Partner and was represented by Amanda Lange of Talx UCM Services Inc.

ISSUES:

Has the claimant been suspended for job-connected 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 production worker beginning on February 4, 2013 through date of hearing as he remains employed. When he was hired the claimant was given a copy of the employer's policy and handbook. That handbook provides that any employee who is arrested and charged with a crime, even if the event occurred on their off-duty time must report it to the employer. The policy further provides that depending upon the nature of the charges the employer may place the employee on unpaid leave or may discharge. Employees are specifically put on notice that acts committed by them, even if done while off-duty that would place the employer's name in a bad light, or could affect the employer's workplace can result in discipline, including suspension or discharge.

The employer has an obligation to protect employees in the workplace. They do not allow employees charged with violent crimes to continue to work while the criminal charges are being resolved. The claimant had been charged with domestic abuse assault and has been on unpaid suspension since March 2, due to the nature of the criminal charges against him, which the employer classifies as a violent crime. As of the date of the hearing, the charges against the claimant have not been resolved.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was suspended from employment 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.

Iowa Admin. Code r. 871-24.32(9) provides:

(9) Suspension or disciplinary layoff. Whenever a claim is filed and the reason for the claimant's unemployment is the result of a disciplinary layoff or suspension imposed by the employer, the claimant is considered as discharged, and the issue of misconduct must be resolved. Alleged misconduct or dishonesty without corroboration is not sufficient to result in disqualification.

The employer has the burden of proving disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The claimant was given clear notice of the employer's policy that even off duty conduct could lead to discipline. An employer has an obligation to protect their entire workforce. Not allowing an employee who is facing charges for a violent crime back into the workplace until those charges are resolved is a reasonable stance for an employer to take to protect the health and safety of their other employees. Violation of a specific work rule, even off-duty, can constitute misconduct. *Kleidosty v. EAB*, 482 N.W.2d 416, 418 (Iowa 1992). Under these circumstances, the administrative law judge finds the claimant's suspension was for conduct that could reasonably affect the employer's best interests. Benefits must be denied.

DECISION:

The April 9, 2015, (reference 02) decision is affirmed. Claimant was suspended from employment for misconduct. Benefits are withheld until such time as claimant works in and has been paid wages equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/pjs