

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

DOMINIQUE A CRAVER
Claimant

APPEAL 15A-UI-01788-JCT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CONIFER REVENUE CYCLE SOLUTIONS
Employer

**OC: 01/18/15
Claimant: Appellant (2)**

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the February 2, 2015 (reference 01) unemployment insurance decision that denied benefits based upon separation. The parties were properly notified about the hearing. A telephone hearing was held on March 11, 2015. The claimant participated. The employer participated through Natasha Stephens, human resources director. Employer's Exhibits One through Four were admitted.

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 patient access representative II and was separated from employment on January 20, 2015 when she was discharged.

In October, the claimant was arrested and charged for an incident of vandalism in her personal time, away from the employer. The claimant was placed on unpaid administrative leave December 23, 2014 pending outcome of her criminal charges (Employer's Exhibit Two). The claimant was told the charges would have to be resolved to a "satisfactory" level to remain employed. While on administrative leave, the claimant called Ms. Stephens twice to ask what would constitute satisfactory resolution. Ms. Stephens replied the claimant could discuss it with her after the disposition of charges. The employer does not have a written policy which defines a "satisfactory" resolution of charges, but Ms. Stephens testified that it includes a complete dismissal of charges or a not-guilty verdict. Ms Stephens also testified the claimant violated the employer's expectations of compliance with state and federal laws. The claimant's charged were reduced to a misdemeanor and she entered into a plea deal of deferred judgment (Employer's Exhibit Three). The claimant was subsequently discharged for not resolving her criminal matters to a satisfactory level, which violated the employer's code of conduct.

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.

Iowa Admin. Code r. 871-24.32(1)a, (4) provide:

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).

(4) Report required. The claimant's statement and the 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.

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 claimant was discharged on January 20, 2015 for an act of vandalism that took place off-duty in October. The claimant was permitted to work from October until December 23, 2014 in light of the charges. For off-duty conduct to be disqualifying, the employer must establish that the conduct is either work related, or alternately, it must have a direct, negative effect on the employer. In this case, the claimant's actions leading to her arrest were not work related. As a patient access representative, the claimant checked in patients for appointments. The employer failed to present any evidence as to how a single act of vandalism would have a direct and negative on the employer's business. No evidence was presented that the claimant's job was previously in jeopardy before the arrest.

Further, the claimant was not reasonably placed on notice that her off duty conduct could result in her immediate discharge. Arguably, all employers prefer their employees comply with state and federal regulations. However, no specific policy pertaining to what tenets of the code of conduct were violated, nor was anything submitted by the employer to support its position that the claimant knew or should have known that she could lose her job for a single off duty arrest.

Based on the evidence, the administrative law judge finds the conduct for which claimant was discharged was an isolated incident of poor judgment and inasmuch as employer had not previously warned claimant about the issue leading to the separation, or put her on notice that she could lose her job for off-duty conduct, it has not met the burden of proof to establish that claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning. An employee is entitled to fair warning that the employer will no longer tolerate certain performance and conduct. Without fair warning, an employee has no reasonable way of knowing that there are changes that need be made in order to preserve the employment. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given.

Nothing in this decision should be interpreted as a condemnation of the employer's right to terminate the claimant for violating its internal policies and procedures. The employer had a right to follow its policies and procedures. The analysis of unemployment insurance eligibility, however, does not end there. This ruling simply holds that the employer did not meet its burden of proof to establish the claimant's conduct leading separation was misconduct under Iowa law. Since the employer has not met its burden of proof, benefits are allowed.

DECISION:

The February 2, 2015 (reference 01) unemployment insurance decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible. The benefits claimed and withheld shall be paid, provided she is otherwise eligible.

Jennifer L. Coe
Administrative Law Judge

Decision Dated and Mailed

jlc/can