

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SAIDU K SAHR**  
Claimant

**APPEAL NO. 15A-UI-08577-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MOSAIC**  
Employer

**OC: 07/05/15**  
**Claimant: Appellant (2)**

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

**STATEMENT OF THE CASE:**

Sahr Saidu filed a timely appeal from the July 24, 2015, reference 02, decision that disqualified the claimant for benefits and that relieved the employer of liability for benefits, based on an Agency conclusion that the claimant had been placed on disciplinary suspension on July 7, 2015 for violation of a company rules. After due notice was issued, a hearing was held on August 20, 2015. Mr. Saidu participated. Michele Hawkins of Equifax represented the employer and presented testimony through Teresa Tekolste. Exhibits One through Four were received into evidence.

**ISSUE:**

Whether the claimant was suspended or discharged for misconduct in connection with the employment that disqualifies the claimant for unemployment insurance benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Mosaic is a social services agency that provides 24-hour support to adults with intellectual disabilities. Sahr Saidu was employed by Mosaic as a direct support professional from 2011 and last performed work for the employer sometime in June 2015. Mr. Saidu began as a full-time employee, but transitioned to an on-call position in 2014. In the on-call position, Mr. Saidu was required to work at least two shifts per month, but usually picked up additional hours. In early July 2015, Mr. Saidu was arrested and charged with Sexual Abuse in the Third Degree and Sexual Exploitation by a Counselor or Therapist. The conduct that prompted the arrest and charges did not involve a Mosaic client, did not occur on Mosaic property, and did not occur at a time when Mr. Saidu was to be performing work for Mosaic. The employer learned of the arrest and charges by reviewing a Polk County Jail online inmate roster and recognizing Mr. Saidu's photo. The alleged victim is an intellectually disabled adult. In connection with the arrest and charges, the court entered a no-contact order restricting Mr. Saidu from having contact with the alleged victim. The court did not inquire about Mr. Saidu's occupation and did restrict Mr. Saidu from contact with other intellectually disabled adults.

On July 6, 2015, Teresa Tekolste, Human Resources Manager for the employer Des Moines facility, telephoned Mr. Saidu in response to learning of the arrest and charges. Ms. Tekolste confirmed with Mr. Saidu that he had been charged with Sexual Abuse and Sexual Exploitation. Ms. Tekolste told Mr. Saidu that he would be suspended from the employment at Mosaic until the charges were resolved. At the time of the suspension, that charges were new and the criminal prosecution was in its earliest stages. Mr. Saidu had not entered a guilty plea or been convicted of a criminal offense.

During the phone call on July 6, 2015, Ms. Tekolste directed Mr. Saidu to appear for in-person meeting at the employer's Des Moines facility on July 7, 2015 at 3:00 p.m. Mr. Saidu had an appointment with a public defender on the same afternoon. Mr. Saidu did not report the meeting at Mosaic or make further contact with the employer.

In preparation for the meeting planned for July 7, 2015, Ms. Tekolste had prepared a letter that formally notified Mr. Saidu of the indefinite suspension "while the external investigation is pending, until there is resolution of the charges, or per Mosaic employee handbook 60 days has been exhausted, specifically by September 7, 2015." While the employer has provided only a portion of the relevant policy material for the appeal hearing, the work rule cited to in the suspension letter appears to pertain to suspensions and investigations concerning Mosaic clients, not unrelated off-duty conduct. Mr. Saidu had received a handbook containing the policy. When Mr. Saidu did not appear for the July 7 meeting, Ms. Tekolste mailed the letter to Mr. Saidu, along with a handwritten notice directing Mr. Saidu to maintain contact with Mosaic and provide an update to the employer no later than August 7, 2015.

#### **REASONING AND CONCLUSIONS OF LAW:**

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).

The employer has the burden of proof in a discharge matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

While past acts and warnings can be used to determine the magnitude of the current act of misconduct, a discharge for misconduct cannot be based on such past act(s). The termination of employment must be based on a current act. See 871 IAC 24.32(8). In determining whether the conduct that prompted the discharge constituted a "current act," the administrative law judge considers the date on which the conduct came to the attention of the employer and the date on which the employer notified the claimant that the conduct subjected the claimant to possible discharge. See also Greene v. EAB, 426 N.W.2d 659, 662 (Iowa App. 1988).

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. See 871 IAC 24.32(4). When it is in a party's power to produce more direct and satisfactory evidence than is actually produced, it may fairly be inferred that the more direct evidence will expose deficiencies in that party's case. See Crosser v. Iowa Dept. of Public Safety, 240 N.W.2d 682 (Iowa 1976).

Iowa Administrative Code section 871 IAC 24.32(9) provides as follows:

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's indefinite suspension of Mr. Saidu from the employment effective July 6, 2015 was in fact a discharge from the employment. The purported suspension was not a disciplinary suspension. Instead, it was an employer-initiated separation from the employment motivated by an intention and desire to protect Mosaic clients and staff from the possibility of future wrongdoing perpetrated by Mr. Saidu, based on knowledge of Mr. Saidu's off-duty arrest on a matter having no connection to Mosaic. A reasonable person might also conclude that Mosaic hoped to protect itself from potential liability and damage to its reputation as a result of employing Mr. Saidu. Mr. Saidu had not plead guilty to anything, had not been tried and convicted of anything, and had not been restricted by a court from pursuing his occupation. The employer has no independent knowledge of misconduct involving Mr. Saidu. All the employer had at the time was an arrest, an unproven allegation of wrongdoing. While the administrative law judge does not discount the seriousness of the criminal allegation, there was no proof of misconduct, including no proof of misconduct *in connection with the employment*. While the employer's conduct in separating Mr. Saidu from the employment may have been prudent under

the circumstances, the separation was not for a reason that would disqualify Mr. Saidu for unemployment insurance benefits. Upon notice that the employer had separated him from the employment, Mr. Saidu was under no further obligation to maintain contact with the employer.

Because Mr. Saidu was discharged for no disqualifying reason, he is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits paid to Mr. Saidu.

**DECISION:**

The July 24, 2015, reference 02, decision is reversed. The claimant was discharged on July 6, 2015 for no disqualifying reason. The claimant is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

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