

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ERIK R DEWOLF**  
Claimant

**APPEAL NO. 15A-UI-13575-S1-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**BLUE BEACON MANAGEMENT INC**  
Employer

**OC: 11/08/15**  
**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Blue Beacon Management (employer) appealed a representative's November 30, 2015, decision (reference 01) that concluded Erik DeWolf (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for January 4, 2016. The claimant did not provide a telephone number for the hearing and, therefore, did not participate. The employer was represented by Diana Perry-Lehr, Hearings Representative, and participated by Tracey Wood, Claims Specialist, and Will Alitz, General Manager. The employer offered and Exhibit One was received into evidence.

**ISSUE:**

The issue is whether the claimant was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: On September 17, 2014, the claimant completed an Application for Employment for the employer's truck washing facility. He answered "no" to the question as to whether he had ever been convicted of violating any laws, including misdemeanors, other than speeding or parking tickets. He certified all his answers were true and complete to the best of his knowledge and understanding. The claimant was hired on November 12, 2014, as a full-time bay attendant. He did not need to drive in order to work for the employer.

On October 12, 2015, the claimant notified the general manager he was arrested for driving under the influence (DUI) for the third time in March 2015. The general manager asked the claimant why he did not list the other DUI's on the employment application. The claimant said he misread the application. The employer told the general manager to terminate the claimant. The claimant continued to work. On October 27, 2015, the claimant completed an application review. The claimant listed his convictions and continued to work for the employer. On November 5, 2015, the general manager telephoned the claimant and terminated him for failure to disclose prior criminal record on his application and being arrested for a third DUI.

The claimant filed for unemployment insurance benefits with an effective date of November 8, 2015. The employer participated personally at the fact finding interview on November 25, 2015, by Tracey Wood.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow the administrative law judge concludes the claimant was not discharged 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(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(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

Iowa Admin. Code r. 871-24.32(6) provides:

(6) False work application. When a willfully and deliberately false statement is made on an Application for Work form, and this willful and deliberate falsification does or could result in endangering the health, safety or morals of the applicant or others, or result in exposing the employer to legal liabilities or penalties, or result in placing the employer in jeopardy, such falsification shall be an act of misconduct in connection with the employer.

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). Misconduct serious enough to warrant a discharge is not necessarily serious enough to warrant a denial of unemployment benefits. Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). In the present case, the employer may legitimately have been concerned about the claimant's past behavior. However, there is no evidence the claimant was under the influence of alcohol at work. While understanding the concerns of the employer, the judge does not believe it has established the falsification of the application could have exposed it or its workers to harm or liability sufficient to warrant a disqualification of unemployment benefits.

The employer must establish not only misconduct but that there was a final incident of misconduct which precipitated the discharge. The last incident was learned of by the employer occurred on October 12, 2015. The claimant was not discharged until November 5, 2015. The employer has failed to provide any evidence of willful and deliberate misconduct which was the final incident leading to the discharge and disqualification may not be imposed.

**DECISION:**

The representative's November 30, 2015, decision (reference 01) is affirmed. The employer has not met its burden of proof to establish job-related misconduct. Benefits are allowed, provided claimant is otherwise eligible.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

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