

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

SUSAN F SLAGLE-BOYD
Claimant

STORM LAKE COMMUNITY SCHOOL DIST
Employer

APPEAL 19A-UI-07468-DB-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 08/11/19
Claimant: Appellant (2)**

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

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the September 13, 2019 (reference 03) unemployment insurance decision that denied benefits based upon her voluntarily quitting work without good cause attributable to the employer. The parties were properly notified of the hearing. A telephone hearing was held on October 14, 2019. The claimant, Susan F. Slagle-Boyd, participated personally. The employer, Storm Lake Community School Dist, was represented by Attorney Steve Avery and participated through witnesses Dr. Stacey Cole and Trudy Pedersen. Claimant's Exhibit A was admitted. Employer's Exhibit 1 was 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: Claimant was employed full-time as an elementary art teacher at the employer's public school. Claimant worked for this employer for two professional development days on June 20, 2019 and June 21, 2019. She was scheduled to work again on August 14, 2019, when the school session began.

Prior to August 14, 2019, claimant was arrested and charged with theft. The theft charges stem from her previous employment at a private educational institution. Claimant has pled not guilty and trial is scheduled on the charges.

On August 14, 2019, claimant met with superintendent Dr. Stacey Cole to discuss these charges and her employment. The employer investigated further and learned that claimant had been charged with other counts of theft in 2015 and 2019, but the charges were all dismissed.

Claimant was informed by Dr. Cole that she would not be allowed to teach for the district because they believed that her arrest violated the State of Iowa Teaching Standard 8 and the school board's policy regarding ethical behavior and professionalism. The policy states that convictions of violations of federal, state or local law may be considered ethical violations. The policy does not state that being charged with a crime is considered an ethical violation. Dr. Cole

told the claimant that the employer would accept her resignation in lieu of termination. Claimant submitted a written resignation on August 28, 2019, stating that it was effective August 14, 2019. See Exhibit 1. Claimant was going to be discharged from employment if she failed to resign.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible.

As a preliminary matter, I find that claimant did not quit. She was discharged from employment because she resigned in lieu of discharge and would not have been allowed to continue her employment.

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(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.

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.

Further, the employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). A determination as to whether an employee's act is misconduct does not rest solely on the interpretation or application of the employer's policy or rule. A violation is not necessarily disqualifying misconduct even if the employer was fully within its rights to impose discipline up to or including discharge for the incident under its policy. The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988).

Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986).

A claimant can be disqualified for benefits when their off duty conduct is a violation of a specific work rule. *Kleidosty v. Emp't Appeal Bd.*, 482 N.W.2d 416 (Iowa 1992). The misconduct must be conduct evincing such willful or wanton disregard of an employer's interest as is found in a deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees. Iowa Admin. Code r. 871-24.32(1).

In this case, the Employer did not prove that there was any policy that would apply to a situation in which the claimant was charged with a crime rather than being convicted of a crime. Further, there is no evidence that the off-duty conduct in being charged with a crime had any serious effect on the Employer's business, had a deleterious effect on morale or working conditions or caused any kind of disruption in the work place. See *Diggs v. Emp't Appeal Bd.*, 478 N.W.2d 432, 434 (Iowa Ct. App. 1991). A discharge for misconduct must be *in connection with the individual's employment*. Iowa Code § 96.5(2).

The burden is on the Employer to show misconduct. *Irving v. Employment Appeal Bd.*, 883 NW 2d 179 (Iowa 2016). In *Irving* the court specified “There are no exceptions in the statute for shifting the burden of proof related to misconduct.” *Id.* at 196. With no policy proven and the lack of proof of a “delirious effect” on the business the employer has failed to meet its burden of proof of establishing a current act of disqualifying *job-related* misconduct. As such, benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The September 13, 2019 (reference 03) unemployment insurance decision is reversed. 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.

Dawn Boucher
Administrative Law Judge

Decision Dated and Mailed

db/rvs