

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**BOBBY D CHASE**  
Claimant

**DESCO FOODS INC**  
Employer

**APPEAL 20A-UI-01316-JC-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 10/27/19  
Claimant: Respondent (1R)**

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Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment  
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

**STATEMENT OF THE CASE:**

The employer filed an appeal from the February 6, 2020, (reference 04) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on March 2, 2020. The claimant participated personally. The employer participated through Terrelle Lu-Marcus, general manager.

The administrative law judge took official notice of the administrative records including the fact-finding documents. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUES:**

Was the claimant discharged for disqualifying job-related misconduct?  
Has the claimant been overpaid any unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?  
Can any charges to the employer's account be waived?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The employer operates a B Bops restaurant. The claimant was employed part-time on the backline for one day and was separated from employment on December 2, 2019, when he was discharged. At the time of discharge, Ms. Lu-Marcus called the claimant and stated only that he was not a good fit for the position.

Ms. Lu-Marcus discharged the claimant based upon information she found online involving a fall 2019 arrest and the claimant. Ms. Lu-Marcus does not usually search online for new employees but searched for the claimant upon recalling his name in the news. Based upon the charges, she made the assumption he would be found guilty. She did not want her minor employees working with the claimant either. The claimant was not asked about the arrest, the disposition of

charges or whether he had ever been arrested as part of the hiring or onboarding process. The claimant did not enter a plea to the charges until after discharge.

The claimant began part-time employment at Perkins on February 26, 2020. The issue of the claimant's eligibility due to his new employment has not yet been addressed by the Benefits Bureau.

The administrative record reflects that claimant has a weekly benefit amount of \$129.00 but has not received unemployment benefits, since establishing his claim for benefits. The administrative record also establishes that the employer did participate in the fact-finding interview or make a witness with direct knowledge available for rebuttal. Terrelle Lu-Marcus participated.

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

For the reasons that follow, the administrative law judge concludes the claimant was discharged for no disqualifying reason.

Iowa law disqualifies individuals who are discharged from employment for misconduct from receiving unemployment insurance benefits. Iowa Code § 96.5(2)a. They remain disqualified until such time as they requalify for benefits by working and earning insured wages ten times their weekly benefit amount. *Id.*

Iowa Administrative Code rule 871-24.32(1)a provides:

"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.

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). 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. IDJS*, 364 N.W.2d 262 (Iowa 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. IDJS*, 425 N.W.2d 679 (Iowa 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 Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984).

In this case, the claimant was hired and allowed to perform work for one shift before being fired. The employer fired the claimant based upon information it learned about a recent arrest, and not based upon a conviction or the claimant’s failure to disclose an arrest on an application or when asked.

While the claimant may have later pled guilty to charges stemming from the fall 2019 arrest, *at the time of employment and discharge*, the employer made the decision to discharge relying upon the arrest only. Disqualifying conduct cannot be predicated on a mere arrest unsupported by a conviction or other credible evidence of the claimant’s intentional conduct. *Irving v. Emp’t Appeal Bd.*, 883 N.W.2d 179 (Iowa 2016) (citing *In re Benjamin*, 572 N.Y.S.2d 970, 972 (App.Div. 1991)(per curiam)).

The question before the administrative law judge in this case is not whether the employer had the right to discharge this employee, but whether the claimant’s discharge is disqualifying under the provisions of the Iowa Employment Security Law. While the decision to terminate the claimant may have been a sound decision from a management viewpoint, for the above stated reasons, the administrative law judge concludes that the employer has not sustained its burden of proof in establishing that the claimant’s discharge was due to a final or current act of job related misconduct. Accordingly, benefits are allowed provided the claimant is otherwise eligible.

Because the claimant is allowed benefits, issues of overpayment and employer relief of charges are moot at this time and will not be discussed further in this decision.

The issue of whether the claimant is eligible for benefits based upon his part-time employment with Perkins is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

**DECISION:**

The February 6, 2020, (reference 04) unemployment insurance decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible.

**REMAND:** The issue of whether the claimant is eligible for benefits based upon his part-time employment with Perkins is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

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Decision Dated and Mailed

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