

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JAMIE C GAMMAGE

Claimant

APPEAL NO. 09A-UI-10343-A

**ADMINISTRATIVE LAW JUDGE
DECISION**

THE EASTER SEAL SOCIETY OF IA INC

Employer

OC: 06/21/09

Claimant: Appellant (2)

Section 96.5-2-a – Discharge
871 IAC 24.32(8) – Final Act of Misconduct

STATEMENT OF THE CASE:

Jamie C. Gammage filed a timely appeal from an unemployment insurance decision dated July 17, 2009, reference 01, that disqualified her for benefits. After due notice was issued, a hearing was held in Des Moines, Iowa on August 14, 2009 with Ms. Gammage participating. Human Resources Generalist Sara Hardy participated for the employer, The Easter Seal Society of Iowa, Inc. Exhibit One was admitted into evidence.

ISSUE:

Was the claimant discharged for disqualifying misconduct?

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Jamie C. Gammage was employed by The Easter Seal Society of Iowa, Inc. from February 26, 2007 until she was discharged June 23, 2009. She last worked as an independent living specialist.

Ms. Gammage's job required that she have driving privileges and be insurable under the company's liability policy. A combination of three moving violations and/or accidents in a three-year period render an individual uninsurable according to that policy. Ms. Gammage was discharged on June 23, 2009 because the employer's insurance company declined to insure her.

The final accident had occurred on April 18, 2008 when Ms. Gammage's vehicle was side swiped by another driver. She was not ticketed, and the other driver's insurance company paid for the damage to Ms. Gammage's vehicle. Ms. Gammage received a speeding citation on October 3, 2007. Two other moving violations, speeding tickets, had occurred before she was employed by The Easter Seal Society.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence establishes that the claimant was discharged for disqualifying misconduct. It does not.

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.

871 IAC 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.

The employer has the burden of proof. See Iowa Code section 96.6-2. Among the elements it must prove is that the final incident leading directly to the decision to discharge was a current act of misconduct. See 871 IAC 24.32(8). The final incident leading to Ms. Gammage's discharge was the accident on April 18, 2008. The evidence establishes that Ms. Gammage was not at fault for that accident. Furthermore, it establishes that the incident occurred more than a year before the discharge. Misconduct as the term is defined for unemployment insurance purposes in Iowa has not been established by the evidence in this record. Benefits are allowed.

DECISION:

The unemployment insurance decision dated July 17, 2009, reference 01, is reversed. The claimant is entitled to receive unemployment insurance benefits, provided she is otherwise eligible.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs