

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

QUINTIN L KLEINMEYER
2121 WESTERN RD
IOWA CITY IA 52240

THE UNIVERSITY OF IOWA
c/o DAVE BERGEON EMP REL
121 'R' UNIV SVC BLDG
IOWA CITY IA 52242

Appeal Number: 06A-UI-01104-HT
OC: 12/04/05 R: 03
Claimant: Respondent (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The employer, University of Iowa, filed an appeal from a decision dated January 10, 2006, reference 01. The decision allowed benefits to the claimant, Quintin Kleinmeyer. After due notice was issued a hearing was held by telephone conference call on February 15, 2006. The claimant participated on his own behalf. The employer participated by Human Resources Specialist David Bergeon.

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: Quintin Kleinmeyer was employed by University of

Iowa from July 15, 2002 until November 4, 2005. He was a full-time laboratory mechanic technician. One of the requirements of his job is to have a valid driver's license so he could drive University of Iowa vehicles to his service calls.

On September 10, 2005, the claimant was arrested for drunk driving. He notified his supervisor, Darian DeYoung, the next day. Mr. DeYoung said he would "have to look into it" and would get back to the claimant. The supervisor never gave him any specific information but told him to look up the Iowa Workforce Development web site and check with the Fleet Administration. Mr. Kleinmeyer talked to a fleet administrator late in September and was told that he could be fired if he lost his license, and would not be able to drive a University vehicle for three years after getting it back, but he could appeal the latter rule.

In the meantime the claimant was given duties within his department which did not require him to drive a University vehicle, although he had been given a work permit to operate his own vehicle. Finally, on November 4, 2005, Mr. DeYoung told him he was fired. The employer no longer had enough work for him to do that did not require him to drive.

The claimant eventually pled guilty to drunk driving on January 15, 2006, and was given a deferred sentence.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes he is 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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

871 IAC 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.

The employer knew the claimant had been arrested for drunk driving and would likely lose his license as early as September 11, 2005. In spite of this, the University allowed him to continue working for seven weeks at other jobs that did not require him to drive. Apparently the actual reason for the claimant's discharge on November 4, 2005, was not the loss of his license but the lack of work available to him. The administrative law judge considers that seven weeks from the date the employer knew of the drunk driving charges to the date of the discharge to put the arrest beyond a current act of misconduct. Under the provisions of the above Administrative Code section, disqualification may not be imposed without a current act.

DECISION:

The representative's decision of January 10, 2006, reference 01, is affirmed. Quintin Kleinmeyer is qualified for benefits, provided he is otherwise eligible.

bgh/pjs