

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROBERT L MCCOLLEY
Claimant

APPEAL NO. 13A-UI-14235-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

LUTHERAN SERVICES IN IOWA INC
Employer

OC: 12/01/13
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the December 19, 2013, (reference 01) unemployment insurance decision that denied benefits based upon a discharge from employment. The parties were properly notified about the hearing. A telephone hearing was held on January 22, 2014. Claimant participated. Employer participated through Clinton office service coordinator Bobbi Bartels. Employer's Exhibits 1 and 2 were received. The Sauk Valley police and fire reports for November 19, 2013, document offered was not accepted as it contained redundant information from Employer's Exhibit 2

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 a community program supervisor and was separated from employment on November 22, 2013. A valid driver's license is required for the job. (Employer's Exhibit 1, p. 6) He was fired for failure to report driving while suspended. The policy provides:

Within 24 hours of occurrence, drivers are required to report all moving violations that occur while performing agency business regardless of whether they occurred while using an agency vehicle or while using the employee's personal vehicle for company use.

(Employer's Exhibit 1, fax p. 7) Claimant was cited for a moving violation pursuant to Iowa Code § 321.285 on March 4, 2013. He reported the citation to Bartels. He pleaded guilty and was fined on July 19, 2013. A notice of the conviction was sent to the DOT on July 24, 2013. Claimant did not pay the fine and court costs; nor did he change his address with the DOT when he moved from his mother's home in January 2013, where he received mail. A notice of non-compliance was mailed to him on August 6, 2013, and a notice to suspend his license was mailed to him on October 4, 2013. (Employer's Exhibit 2, fax pp. 10, 13)

On November 17, while driving from Chicago to Iowa on personal business he ran out of gas. An officer stopped to help, checked his license and found it was suspended because of the unpaid fine from July. Claimant drove himself to and from work on November 18 and 19 but did not drive clients. He paid the fine on November 20. He had driven clients between October 4 and November 15, 2013, while his license was suspended. On November 20, Bartels became aware of claimant driving while suspended when another employee brought it to her attention.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related 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.

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.

Repeated traffic violations rendering a claimant uninsurable can constitute job misconduct even if the traffic citations were received on the claimant's own time and in his own vehicle. *Cook v. Iowa Dep't of Job Serv.*, 299 N.W.2d 698 (Iowa 1980).

The employer has a legal obligation to abide by state and federal transportation safety statutes and regulations and not allow unlicensed individuals to drive. It was claimant's responsibility to pay the fine in a timely manner in order to retain a valid license. It was also his responsibility to maintain a current address with the DOT after the citation. While the license suspension issue

was not related to his work, claimant's failure to maintain a valid, unrestricted driver's license as a known condition of the employment was misconduct sufficient to warrant a denial of benefits.

DECISION:

The December 19, 2013, (reference 01) decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/css