

**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**

**TANI G MONSON
14 CLARK DR
DUBUQUE IA 52001**

**SPENCER GIFTS LLC
c/o TALX – EMPLOYERS UNITY INC
PO BOX 749000
ARVADA CO 80006 9000**

**Appeal Number: 05A-UI-11807-DWT
OC: 08/28/05 R: 04
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:

Spencer Gifts LLC (employer) appealed a representative's November 10, 2005 decision (reference 03) that concluded Tani G. Monson (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on December 6, 2005. The claimant participated in the hearing. Anna Marie Gonzalez, a representative with TALX-Employer's Unity, appeared on the employer's behalf. Melissa Bleymeyer, the store manager, and Mallory Hubanks, the assistant manager, appeared on the employer's behalf. During the hearing, Employer's Exhibit One was offered and admitted as evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The employer hired the claimant to work as a sales supervisor on October 4, 2005. When the claimant completed her employment application, she indicated she had not been convicted of a criminal offense. The application stated, "Have you been convicted of a criminal offense, other than minor traffic violations. DWI ...is not considered minor." (Employer's Exhibit One.) The claimant knew she had pled guilty to a DUI charge four years earlier, but did not consider this a criminal offense. The claimant understood the employer performed background checks on all employees.

On October 16, Bleymeyer received information from the corporate office to discharge the claimant. Bleymeyer understood the claimant did not pass the background check but did not know how she did not pass the test.

The claimant reopened her claim for unemployment insurance benefits during the week of October 23, 2005. The employer is not one of the claimant's base period employers.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The employer may have had compelling business reasons for discharging the claimant, but the employer's witnesses did not know why the claimant was discharged. The employer's representative asserted the claimant had been discharged because she falsified her employment when she indicated she had not been convicted of a criminal offense. The employer's witnesses, however, were only told the claimant did not pass the background check and the corporate office did not provide the specific details for the discharge. The claimant testified that she considered her DUI charge a traffic offense, not a criminal offense so it was necessary for her to report this conviction that occurred four years ago. The evidence does not establish exactly why the claimant was discharged. As a result, as of October 16, 2005, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The representative's November 10, 2005 decision (reference 03) is affirmed. The employer discharged the claimant for reasons that do not constitute work-connected misconduct. As of October 16, 2005, the claimant is qualified to receive unemployment insurance benefits,

provided she meets all other eligibility requirement. The employer's account will not be charged during the claimant's current benefit year.

dlw/kjw