

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**BRENDA J FINTER**  
Claimant

**APPEAL NO: 14A-UI-08642-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MIDAMERICAN ENERGY COMPANY**  
Employer

**OC: 07/27/14**  
**Claimant: Appellant (1)**

Iowa Code § 96.5(2)a – Discharge

**PROCEDURAL STATEMENT OF THE CASE:**

The claimant appealed a representative's August 13, 2014 (reference 01) determination that disqualified her from receiving benefits and held the employer's account exempt from charge because she had been discharged for disqualifying reasons. The claimant participated at the September 9 hearing. Peg Roy, the employer's attorney, represented the employer. Burt Short testified on the employer's behalf. During the hearing, Employer Exhibits One through Seven were offered and admitted as evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is not qualified to receive benefits.

**ISSUE:**

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

**FINDINGS OF FACT:**

The claimant started working for the employer in May 2013. She worked as a full-time industrial hygienist. The claimant received copies of the employer's policies titled Code of Business Conduct and Drug and Alcohol (Employer Exhibit Three). The employer's Business of Code of Conduct informs employees they are strictly prohibited from using, possessing, purchasing or being under the influence of alcohol at any time while working or on company property (Employer Exhibit One). The employer's driving policy, as revised in May 2014, informs employees they may not consume alcohol prior to or while operating a company vehicle during work hours **or personal time**. Any employee convicted of driving a company, **personal**, rented, or leased vehicle during the course of employment, while under the influence of alcohol, may be subject to termination (Employer Exhibit Six). Emphasis supplied.

On June 12, 2014 the claimant finished work around noon. She asked her supervisor if she could take a side trip south of Des Moines to look at a puppy for her daughter before she drove home to the Council Bluffs area in her personal vehicle. The claimant's supervisor gave her permission to look at a puppy in Leon instead of driving directly home. Around 3:30 p.m. the claimant was arrested and charged with OWI. The claimant's husband informed the employer about the claimant's arrest either the evening of June 12 or the morning of June 13.

After the claimant was released from jail, she was immediately hospitalized. When the claimant was released from the hospital, she entered a treatment facility. After she finished her treatment, the claimant was released to return to work on July 23. When the employer talked to her on July 23, the claimant admitted she had consumed alcohol after she left work on June 12. The claimant does not know when she purchased the alcohol. The claimant was also taking prescribed medication. The claimant was told she should not drink alcohol when she took the medication because the medication could intensify the effects of alcohol. The claimant did not understand the consequences if she consumed alcohol while taking the medication.

The employer discharged the claimant on July 25 because the employer concluded she purchased and consumed alcohol during work hours, during her core business hours or when she was returning to her home, after she had finished an assigned audit in Des Moines (Employer Exhibit Two).

### **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. The law defines misconduct as:

1. A deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment.
2. A deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees. Or
3. 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 do not amount to work-connected misconduct. 871 IAC 24.32(1)(a).

The claimant asserted she was off duty when she was arrested and charged with an OWI because she had finished an audit and received permission to look at a puppy before she drove home. The employer argued that because the claimant purchased and consumed alcohol during core business hours, the claimant violated the employer's driving policy and Business Code of Conduct by drinking alcohol during the employer's core business hours. The claimant does not dispute that she consumed alcohol between noon and 3:30 p.m. and later pled guilty to an OWI charge.

The issue in this case revolves around whether the claimant violated the employer's policy during the course of her employment or whether she consumed alcohol during off-duty hours. Since the claimant had permission from her supervisor to drive south of Des Moines to look at a puppy before she drove home, the claimant's conduct took place during off-duty hours.

The Iowa Supreme Court has ruled that off-duty misconduct may constitute work-connected misconduct under the unemployment insurance law if the conduct deliberately violates the employer's work rules. *Kleidosty v. Employment Appeal Board*, 482 N.W.2d 416, 418 (Iowa 1992). The employer's driving policy, as revised in May 2014, informs employees they may not consume alcohol prior to or while operating a company vehicle during work hours **or personal**

**time.** Any employee convicted of driving a company, **personal**, rented, or leased vehicle during the course of employment, while under the influence of alcohol, may be subject to termination (Employer Exhibit Six). Even though the claimant was driving her personal vehicle, the logical interpretation of the employer's policy is that the employer does not allow employees during off-duty hours to drink while driving. Under this analysis the claimant committed work-conducted misconduct.

In the alternative, since the claimant was not home and the employer pays for mileage to an employee's home, a logical conclusion is that the claimant was drinking alcohol during her employment or the employer's core business hours because she was on her way home from work on personal time. The employer's policy covers personal time. Even under this analysis, the claimant committed work-connected misconduct. As of July 27 the claimant is not qualified to receive benefits.

**DECISION:**

The representative's August 13, 2014 (reference 01) determination is affirmed. The employer discharged the claimant for reasons that amount to work-connected misconduct. As of July 27, 2014 the claimant is disqualified from receiving unemployment insurance benefits until she has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

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