

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARCUS A OXLEY
Claimant

APPEAL NO. 12A-UI-10015-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CITY OF IOWA CITY
Employer

OC: 07/29/12
Claimant: Appellant (1)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Marcus Oxley, filed an appeal from a decision dated August 16, 2012, reference 01. The decision disqualified him from receiving unemployment benefits. After due notice was issued a hearing was held by telephone conference call on September 12, 2012. The claimant participated on his own behalf. The employer, City of Iowa City, participated by Superintendent of Streets Bud Stockman and Human Resources Generalist Tracy Robinson.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Marcus Oxley was employed by Iowa City from February 14, 1992 until July 27, 2012 as a full-time street maintenance worker. The job description required him to have a valid CDL in order to perform the essential functions of his job.

On May 20, 2012, the claimant reported to Superintendent of Streets Bud Stockman he had been arrested for drunk driving. He had his CDL still valid until he concluded his appeal with the Iowa Department of Transportation. Mr. Oxley decided to withdraw his DOT hearing July 27, 2012, which automatically meant the revocation of his CDL was reinstated.

Mr. Stockman informed he could not remain employed because he had not CDL and discharged him July 27, 2012.

REASONING AND CONCLUSIONS OF LAW:

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.

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. IDJS*, 299 N.W.2d 698 (Iowa 1980). The administrative law judge considers the reasoning in this case to be pertinent in this situation. Mr. Oxley rendered himself unable to perform the essential functions of his job because he had no valid CDL. This was because of off-duty behavior of driving while intoxicated. He did not elect to exhaust all his options when he withdrew his appeal to the DOT and consented to the revocation of his temporary CDL.

Mr. Oxley believed he should have been able to take his accumulated vacation time to wait for the outcome of his criminal trial, but he never asked anyone if he could so. Presumably, he thought they should make the offer to him, but that is not the employer's responsibility. He could not say how this could have made a difference, as he pled guilty to OWI in order to receive a deferred sentence after the discharge. He will not have a CDL returned to him until 2013.

The claimant's conduct resulted in him not being able to continue working for Iowa City. This is a violation of the duties and responsibilities the employer has the right to expect of an employee and conduct not in the best interests of the employer. The claimant is disqualified.

DECISION:

The representative's decision of August 16, 2012, reference 01, is affirmed. Marcus Oxley is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount in insured work, provided he is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/kjw