

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DEBORAH WEBER
Claimant

APPEAL NO. 07A-UI-08501-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OPPORTUNITY VILLAGE
Employer

**OC: 07/29/07 R: 02
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Deborah Weber (claimant) appealed an unemployment insurance decision dated August 27, 2007, reference 01, which held that she was not eligible for unemployment insurance benefits because she was discharged from Opportunity Village (employer) for work-related misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on September 19, 2007. The claimant participated in the hearing. The employer participated through Pat Larson. 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:

The issue is whether the employer discharged the claimant for work-related misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a full-time personal assistant from December 6, 2005 through August 3, 2007. This employer provides services to developmentally disabled adults and children in the northern part of the state. As a condition of employment, the claimant had to have a valid driver's license since she provided transportation to the employer's clients. Consequently, employees are to notify the employer immediately if their driving privileges have been revoked or if they are no longer licensed to drive. The claimant was trained on that policy on the date of hire and it was reviewed in subsequent meetings on December 8, 2005 and December 20, 2005. The employer's policies also provide that dishonesty and conduct which could endanger the well being, safety or health of the employee or another person are both terminable offenses.

On July 25, 2007, the employer read in the local paper that the claimant had been cited for three offenses on July 14, 2007. The paper reported the claimant had been cited for no insurance, driving while suspended and possession of drug paraphernalia. The employer met with the claimant on July 31, 2007 and she admitted she had driven her personal vehicle without having insurance on the vehicle to transport agency clients. The claimant denied driving clients while

her license was suspended but the employer learned the suspension had been in effect since April 20, 2007 to the present. She stated that she did not know her license had been suspended and then falsely stated she had a work permit. Furthermore, the claimant stated the drug paraphernalia charge resulted from having pain pills in her possession but the employer contacted the Clear Lake Police and was advised the charge resulted from the claimant having a "glass meth pipe" in her possession. The claimant was discharged on August 3, 2007 for multiple policy violations.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a.

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.

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The claimant was discharged for multiple policy violations. She transported the employer's clients while her driver's license was suspended and in her vehicle which did not have insurance. She failed to notify the employer of the loss of her driving privileges. And finally, she provided false statements to the employer with regard to the drug

paraphernalia charge and the claim of having a work permit when she did not have one. The claimant's illegal conduct and policy violations were a willful and material breach of the duties and obligations to the employer and a substantial disregard for the standards of behavior the employer had the right to expect of the claimant. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

DECISION:

The unemployment insurance decision dated August 27, 2007, reference 01, is affirmed. The claimant is not eligible to receive unemployment insurance benefits because she` was discharged from work for misconduct. Benefits are withheld until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/css