

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**LESLIE J CLARK**

Claimant

**APPEAL NO: 13O-UI-09044-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**O'REILLY AUTOMOTIVE INC**

Employer

**OC: 04/21/13**

**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

O'Reilly Automotive, Inc. (employer) appealed a representative's May 9, 2013 decision (reference 01) that concluded Leslie J. Clark (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on September 12, 2013. The claimant participated in the hearing. Jessica Shelton appeared on the employer's behalf. 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:**

Was the claimant discharged for work-connected misconduct?

**OUTCOME:**

Affirmed. Benefits allowed.

**FINDINGS OF FACT:**

The claimant started working for the employer on May 20, 2012. He worked part time as a parts specialist at the employer's LeMars, Iowa store. His last day of work was April 21, 2013. The employer discharged him on April 22, 2013. The reason asserted for the discharge was that the claimant had an unfavorable criminal background check and had failed to disclose convictions on his job application.

The claimant had made his job application online in about February of 2012. There were questions on the application asking about his driving record for the past three years, and asking about any criminal convictions. The claimant read the question as also asking for criminal convictions within the past three years, and only disclosed those convictions. The criminal background check ran on him was only a "medium package" and did not show any conviction other than those the claimant had reported. Prior to April 2013 the claimant had even advised his store manager of the convictions, and that store manager had not made any negative response.

In April 2013 the employer ran a new and more in depth back ground check, possibly because of an anonymous tip, and possibly because the claimant was up for a promotion. That background check showed five convictions for theft in 2006 through 2008, which all stemmed from writing bad checks. When the employer found these convictions, it determined to discharge the claimant.

#### **REASONING AND CONCLUSIONS OF LAW:**

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. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer was right to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. IDJS*, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate matters. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988).

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445 (Iowa 1979); *Henry v. Iowa Department of Job Service*, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. 871 IAC 24.32(1)a; *Huntoon*, supra; *Henry*, supra. In contrast, 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. 871 IAC 24.32(1)a; *Huntoon*, supra; *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984).

The reason cited by the employer for discharging the claimant is the failure to report the criminal convictions on his application, and even having the convictions. Misconduct connotes volition. *Huntoon*, supra. There is no evidence the claimant intentionally misread the application, and he had subsequently been forthcoming with his store manager. Further, the false statement must endanger the health, safety or morals of the applicant or others or result in exposing the employer to legal liabilities or penalties or result in placing the employer in jeopardy. It is not clear what legal liabilities or penalties would have resulted from continuing the claimant's employment. Further, the Supreme Court has ruled that a misrepresentation on a job application must be materially related to job performance to disqualify a claimant from receiving unemployment insurance benefits. *Larson v. Employment Appeal Board*, 474 N.W.2d 570 (Iowa 1991). It is not clear that the prior convictions related to passing bad checks are materially related to the claimant's job performance. The employer has not met its burden to show disqualifying misconduct. *Cosper*, supra. Based upon the evidence provided, the claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

**DECISION:**

The representative's May 9, 2013 decision (reference 01) is affirmed. The employer did discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

---

Lynette A. F. Donner  
Administrative Law Judge

---

Decision Dated and Mailed

ld/css