

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JODY A GORMAN
Claimant

APPEAL NO: 12A-UI-01898-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DAC INC
Employer

OC: 01/15/12
Claimant: Appellant (2)

Iowa Code § 96.5(2)a – Discharge

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's February 22, 2012 determination (reference 02) that disqualified her from receiving benefits and held the employer's account exempt from charge because the claimant had been discharged for disqualifying reasons.

The only change from reference 02 and reference 01 is the stated reason for the claimant's discharge. Both reference 01 and reference 02 determinations decided the claimant had been discharged for disqualifying reasons. Even though it was not necessary to issue essentially the same determination in reference 02 that was issued in reference 01, a fact finder did. Since the fact finder did not amend reference 01, the two determinations are identical but two decisions, one for each determination must be issued. The rest of this decision is identical to the decision issued for reference 01. The only difference in this decision and the decision for appeal 12A-UI-01897-DWT, is the date of the determination and the reference numbers.

The claimant participated in the hearing. Kelly Schubert, the human resource director, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is 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 on September 17, 2010. The claimant worked full time as the transportation supervisor. The employer's insurance company does not insure an employee when an employee has three traffic violations or accidents in a ten-year timeframe on their motor vehicle record.

Before the employer hired the claimant, she had a speeding violation for driving ten miles over the posted speed limit. The claimant received this speeding ticket on August 2, 2010. When the claimant was on vacation on August 22, 2011, an elderly gentleman hit the claimant when

she was in her personal vehicle. The claimant was not at fault for this accident and did not receive a traffic citation.

On December 12, 2011, when the claimant was working and driving the employer's vehicle, she was in an accident while making a left hand turn. The claimant received a traffic citation for failure to maintain control. At the end of December 2011 or early January 2012, the employer completed a motor vehicle check and learned the above incidents were on the claimant's motor vehicle record. Even though the employer received information that the claimant was not at fault for the August 22, 2011, accident, the employer's insurance carrier would no longer insure the claimant. The employer discharged the claimant on January 13, 2012, for having three violations or accidents on her driving record within ten years.

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 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 propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 665 (Iowa 2000).

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).

While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act. 871 IAC 24.32(8).

Based on the employer's insurance carrier's policy, the employer discharged the claimant for business reasons. The evidence does not establish that the claimant intentionally violated the employer's driving policy. The fact the claimant had three incidents on her driving record, a speeding ticket before she began working, an August 22, 2011 accident that was not her fault and the December 12 accident in which the claimant received a traffic citation, does not establish that the claimant was negligent or careless to the extent that she committed work-connected misconduct. Also, the December 12, 2011 accident does not amount to a current act of work-connected misconduct. As of January 15, 2011, the claimant is qualified to receive benefits.

DECISION:

The representative's February 22, 2012 determination (reference 02) is reversed. The employer discharged the claimant for business reasons, but the claimant did not commit a current act of

work-connected misconduct. As of January 15, 2012, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements. The employer's account is subject to charge.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css