

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DENISE A SCHILTZ
Claimant

APPEAL NO: 11A-UI-09160-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

FINLEY HOSPITAL
Employer

**OC: 06/12/11
Claimant: Appellant (2)**

Iowa Code § 96.5(2) - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's July 6, 2011 determination (reference 01) that disqualified her from receiving benefits and held the employer's account exempt from charge because the claimant voluntarily quit her employment for reasons that qualify her to receive benefits. The claimant participated in the hearing. Sarah Dickey, the human resource business manager, 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 claimant voluntarily quit her employment for reasons that qualify her to receive benefits, or did the employer discharge her for reasons constituting work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in November 2008. The claimant worked full time as a registered nurse who went to clients' homes to provide services. The claimant drove her personal vehicle to the homes.

On January 9, 2011, the claimant was arrested for operating a vehicle while under the influence. She informed the human resource director about her arrest on February 7, 2011. The claimant continued to work until she broke her wrist on February 23. The claimant's broken wrist was not a work-related injury.

The claimant went on short-term disability for her broken wrist. After consulting her attorney, the claimant decided to serve a 30-day suspension of her driver's license when she was on short-term disability. The claimant learned on May 10 her physician would release her to return to work on May 16. The claimant contacted the employer and asked the employer to sign paperwork the Iowa Department of Transportation required to verify the claimant's need for a work permit to drive for her job. The employer would not sign the paperwork after the employer's insurance company indicated the claimant would not be covered if she was involved in an accident. If an employee has an OWI conviction, the employee can never drive for work

while working for the employer. As of August 3, 2011, the claimant's OWI charge has not been resolved.

On May 10, the human resource director told the claimant she needed to resign. The employer would not allow the claimant to continue working at her current position – driving to clients' home to provide care to them. The claimant submitted her resignation on May 16, with an effective date of June 14. The employer ended the claimant's employment immediately on May 16, 2011.

The claimant applied for another position with the employer that did not require her to drive. The employer did not hire her for this position.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if she voluntarily quits employment without good cause attributable to the employer, or an employer discharges her for reasons constituting work-connected misconduct. Iowa Code §§ 96.5(1), (2)a. The facts establish the claimant had no intention of quitting her employment. The employer advised the claimant to quit and if she had not, she still would not have a job because the employer made the decision she could not continue her employment as a home health nurse for the employer. For unemployment insurance purposes, the employer initiated the claimant's employment separation and discharged the claimant.

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). The act for which the claimant ultimately became unemployed was her arrest for an OWI. Since the claimant's OWI case has not yet been resolved in the court system, the facts do not establish that she was actually driving while under the influence. Since the claimant may be found innocent of this charge, the fact she was arrested does not establish that she committed off-duty misconduct. Since driving was an essential part of the claimant's job, if she had been driving while under the influence, she committed work-connected misconduct. *Kleidosty v. Employment Appeal Board*, 482 N.W.2d 416, 418 (Iowa 1992).

Even though the claimant had a temporary license, she was legally able to drive if an employer verified her job required her to drive between certain hours. The employer's refusal to sign the necessary paperwork does not establish that the claimant committed work-connected misconduct. The employer ended the claimant's employment because its insurance company would not insure the claimant if she had an accident. While the insurance company may not have covered the claimant, as of May 16, the claimant had not been convicted of an OWI offense.

If the claimant had not asked the employer to sign paperwork to verify her need for a work permit to drive, it is doubtful the employer would have asked the claimant to resign when she was released to return to work. Even though the employer had business reasons for asking the claimant to resign, the facts do not establish that the claimant committed a current act of work-connected misconduct or even an act of work-connected misconduct. Therefore, as of June 12, 2011, the claimant is qualified to receive benefits,

DECISION:

The representative's July 6, 2011 determination (reference 01) is reversed. The claimant did not voluntarily quit her employment. Instead, the employer initiated her employment resignation by asking or telling her to resign. Even though the employer had business reasons for ending the claimant's employment, she did not commit work-connected misconduct. As of June 12, 2011, the claimant is qualified to receive benefits, provide 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/pjs