

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JULIA A WILLIAMS**  
Claimant

**APPEAL NO. 06A-UI-10388-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CARE INITIATIVES**  
Employer

**OC: 09/24/06 R: 03  
Claimant: Respondent (2)**

Section 96.5(2) – Discharge  
Section 96.3(7) – Overpayment

**STATEMENT OF THE CASE:**

The employer, Care Initiatives, filed an appeal from a decision dated October 16, 2006, reference 01. The decision allowed benefits to the claimant, Julia Williams. After due notice was issued, a hearing was held by telephone conference call on November 8, 2006. The claimant participated on her own behalf. The employer participated by Administrator Amy Johnson and was represented by TALX in the person of Mike Sloan.

**ISSUE:**

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

**FINDINGS OF FACT:**

Julia Williams was employed by Care Initiatives from September 9, 2003 until August 28, 2006. She was a part-time certified nursing assistant and worked the night shift from 10:00 p.m. until 6:00 a.m., with only one other staff member, a nurse, on that shift.

On June 22, 2006, the claimant notified the employer she had to take up residence in a half-way house in Ottumwa, Iowa, because she had pled guilty to her third charge of felony forgery. Ottumwa is approximately a one-hour drive from the employer's facility and the claimant was prohibited from working anywhere outside the Ottumwa area due to her incarceration. She notified Administrator Amy Johnson of the situation and said she did not expect to have to serve the whole two-year sentence.

The administrator checked with the Department of Human Services (DHS) and was advised in a report on August 22, 2006, the claimant could continue working only if she were "closely supervised" for 1,040 hours. The employer had no openings on any other shift except the overnight shift and with only one other staff member on that shift, close supervision could not be guaranteed in order to comply with the requirements of the DHS report.

Ms. Williams was notified by letter that she was discharged. She has received unemployment benefits since filing a claim with an effective date of September 24, 2006.

**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.

The claimant was discharged because, first of all, she was incarcerated and not able to work in the facility because of the distance from the halfway house where she was confined. In addition, the employer could not continue to allow her to work on the third shift, the only shift where there were any openings, because she could not be closely supervised as required.

Ms. Williams third felony conviction is the reason she was unable to continue working for Care Initiatives. 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 same reasoning to hold in this case. It was the claimant's illegal activities which caused her to be unable to continue working for the employer, even though the felony did not occur on company time or property. Rendering herself unable to continue to perform services for the employer is conduct not in the best interests of the employer and she is disqualified.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The claimant has received unemployment benefits to which she is not entitled. These must be recovered in accordance with the provisions of Iowa law.

**DECISION:**

The representative's decision of October 16, 2006, reference 01, is reversed. Julia Williams is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount, provided she is otherwise eligible. She is overpaid in the amount of \$888.00.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

bgh/kjw