

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**TOMMIE L JOHNS**  
Claimant

**APPEAL NO. 11A-UI-08881-H2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**PRAIRIE HILLS  
AT OTTUMWA OPERATIONS LLC**  
Employer

**OC: 06-12-11  
Claimant: Appellant (1)**

Iowa Code § 96.5(2)a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the June 27, 2011, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on July 29, 2011. The claimant did participate. The employer did not participate.

**ISSUE:**

Was the claimant discharged due to job related misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a nursing assistant, full-time, beginning February 2, 2009, through June 10, 2011, when she was discharged. The claimant knew that in order to work for this employer, she needed to be cleared by the Department of Human Services (DHS), as the employer is a licensed health care facility. On May 28 the claimant was notified by letter that her name was placed on the child abuse registry and she was no longer eligible to work for this employer. The employer was notified by DHS on June 10 and the claimant was removed from employment.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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.

Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990). The claimant knew that in order to maintain her employment for this employer, her name could not be placed on the child abuse registry.

This situation is like that of employers that require their employees to maintain valid driver's licenses. Repeated traffic violation 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). When an employee loses their license to drive, they can be discharged and the employer not liable for unemployment insurance benefits.

Even though the incident for which the claimant was placed on the child abuse registry happened away from work, it was the claimant's responsibility to keep her name off the child abuse registry. In this situation, the employer has no choice but to violate the law and face sanctions if they allow the claimant to continue working, or to discharge the claimant. The claimant's failure to keep her name off the child abuse registry as a known condition of her employment was misconduct sufficient to warrant a denial of benefits.

**DECISION:**

The June 27, 2011 (reference 01) decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

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Teresa K. Hillary  
Administrative Law Judge

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Decision Dated and Mailed

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