

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**DEILA SALMAN**  
Claimant

**APPEAL 21A-UI-08352-ED-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**REM IOWA COMMUNITY SERVICES INC**  
Employer

**OC: 09/20/20  
Claimant: Respondent (1)**

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Iowa Code § 96.5(1) – Voluntary Quitting  
Iowa Code § 96.5(2)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

The employer/appellant filed an appeal from the February 12, 2021, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified of the hearing. A telephone hearing was held on June 7, 2021. The claimant, Deila Salman, did not participate. The employer, REM Iowa Community Services Inc, participated through hearing representative Jackie Boudreaux and Program Director, Purvis Williams.

**ISSUES:**

Did claimant voluntarily quit the employment with good cause attributable to employer?  
Was the claimant discharged for disqualifying job-related misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a full time direct support professional. She began working for this employer on April 3, 2019 and her employment ended on December 28, 2021. Claimant's manager was Heather Walker, Program Director.

Claimant was suspended on December 28, 2020 pending an investigation into an Operating While Intoxicated conviction. It was determined that claimant had been convicted of an Operating While Intoxicated, Second Conviction. Driving is a requirement of the claimant's job. Claimant is required to drive residents to medical appointments, grocery shopping and other places. The REM staff typically use their own personal vehicle to drive residents to appointments.

On January 22, 2021 claimant was terminated from employment due to her driving conviction. There were no non-driving positions available at the facility at the time of the claimant's termination of employment.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes as follows:

Iowa Code §96.5(1) provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

Iowa Code § 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.

Iowa Admin. Code r. 871-24.32(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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

First it must be determined whether claimant quit or was discharged from employment. A voluntary quitting means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer and requires an intention to terminate the employment. *Wills v. Emp't Appeal Bd.*, 447 N.W. 2d 137, 138 (Iowa 1989). A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980); *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992).

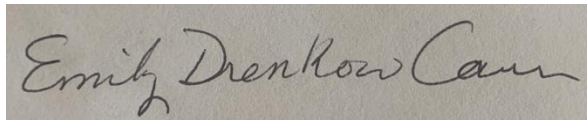
For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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 claimant lost her driver's license because of her own illegal action of operating a motor vehicle while intoxicated. A valid driver's license was a substantive requirement of the claimant's job duties. The employer is not obligated to accommodate the claimant during license suspension period but does have a duty to protect the public safety by keeping impaired or unlicensed drivers off the road. The employer is not required to accommodate the claimant during the license suspension period when she was unable to legally perform the essential functions of his job. Benefits are denied.

**DECISION:**

The February 12, 2021, 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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Emily Drenkow Carr  
Administrative Law Judge

June 21, 2021  
Decision Dated and Mailed

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