

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CHAD J MILLER**  
Claimant

**APPEAL NO. 12A-UI-08778-S2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**DISCOVERY LIVING INC**  
Employer

**OC: 06/17/12**  
**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Chad Miller (claimant) appealed a representative's July 12, 2012 decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits because he was discharged from work with Discovery Living (employer) for violation of a known company rule. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for September 5, 2012. The claimant was represented by Brian Gruhn, Attorney at Law, and participated personally. The employer participated by Bob Hebl, executive director; Lauri Becker, coordinator; and Deb Berg, director of human resources. Attorney at Law Colleen Uhlenkamp observed the hearing.

**ISSUE:**

The issue is whether the claimant was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was hired on June 8, 2007, and at the end of his employment he was working as a full-time community living specialist. The claimant signed for receipt of the employer's handbook on October 21, 2009; October 3, 2011; and February 27, 2012. The employer did not issue the claimant any warnings during his employment.

On June 13, 2012, the claimant and three co-workers drove van loads of individuals to Adventureland. The vans traveled five miles per hour over the speed limit. Once during the trip a co-worker called the claimant on his cell phone to request a bathroom break. The vans stopped for the break. At Adventureland, the claimant and another worker went on a ride together without the other individuals.

On June 13, 2012, someone reported to the employer that the claimant was speeding, used his cell phone while driving, rode rides by himself, and made an obscene gesture. On June 21, 2012, the employer met with the claimant. The claimant admitted to all the accusations except for making an obscene gesture. He notified the employer that the other vans were speeding,

that a co-worker called him and another co-worker went on the ride with him. The employer terminated the claimant. The other workers remain employed by the employer.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was not discharged for 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.

The employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). The employer provided evidence that the claimant sped, used his cell phone for work purposes, and rode a ride with a co-worker. Clearly, the employer tolerated this behavior from the claimant's co-workers, as they are still employed. The employer did not meet its burden of proof to show misconduct. Benefits are allowed.

**DECISION:**

The representative's July 12, 2012 decision (reference 01) is reversed. The employer has not met its burden of proof to establish job-related misconduct. Benefits are allowed.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

bas/kjw