

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

**ROBERTA J WELLS**  
Claimant

**APPEAL NO. 18A-UI-01199-S1-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ENTERPRISE RENT-A-CAR COMPANY**  
Employer

**OC: 12/31/17**  
**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Roberta Wells (claimant) appealed a representative's January 23, 2018, decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits after her separation from employment with Enterprise Rent-A-Car Company (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for February 20, 2018. The claimant participated personally. The employer participated by Ian Cahill, Group Rental Manager. The employer offered and Exhibit 1 was received into evidence.

**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 considered all of the evidence in the record, finds that: The claimant was hired on May 13, 2015, as a full-time driver. When she applied for the job on line, the claimant signed for receipt of some policies. The employer has a handbook but the claimant did not see it or sign for receipt of it. The handbook states that employees may be disciplined or terminated for dishonesty. Employees must report to their supervisor all "moving violations and/or convictions that occur on company time while in either a company or personal vehicle". They must also report any "suspension, revocation, expiration, or invalidation of their license". The claimant used her Texas drivers' license when she applied for the job.

The employer issued the claimant two written warnings. The claimant appealed them and the warnings were rescinded. On June 22, 2017, the claimant was ticketed for speeding and having no insurance. The violation occurred during non-work hours. She paid the fines. On June 29, 2017, the claimant told her supervisor about the speeding violation and asked if she was supposed to report it. The supervisor told her the policy said if she got three in one year she could be terminated. The supervisor did not issue her any type of warning.

At work a sign reminded employees about a work policy. A co-worker continued to violate the policy and the group rental manager allowed it. He treated the co-worker differently than the claimant. The claimant called the person who signed the policy, the manager's supervisor. A month later, the manager demoted the claimant and transferred her to a different location. Around November 13, 2017, the claimant called the human resources director twice and complained about the manager's retaliation tactics and discriminatory behavior. On December 1, 2017, the human resources director set a meeting for herself, the claimant, and the manager. The claimant was uncomfortable having the meeting with the manager.

On December 28, 2017, the manager questioned the claimant about whether she had an Iowa drivers' license. The claimant said she was issued an Iowa drivers' license and it was valid but she could not find it. She told the employer that she used her Texas license at work because that was the license she used when she was hired.

On December 29, 2017, the manager ran an audit and found the June 22, 2017, violations. On January 3, 2017, the employer terminated the claimant for what it believed was a falsification. The employer thought the claimant said she did not have an Iowa drivers' license when she did.

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

For the reasons that follow the administrative law judge concludes the claimant was eligible to receive unemployment insurance benefits.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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).

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). An employer may discharge an employee for any number of reasons or no reason at all, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, the employer incurs potential liability for unemployment insurance benefits related to that separation. First of all, the employer must give employees notice of the policies in the handbook by letting them see them. They can provide proof that employees have seen them by having them sign for receipt of the handbook. In this case the claimant did not sign that she received a copy of the employer's handbook.

Secondly, there is no policy in the handbook that says employees must inform the employer if they lose the physical license card. The employer terminated the claimant for saying she lost the card when the license had not been suspended, revoked, expired or invalidated. The employer believes the claimant's statement is somehow false but did not indicate how.

At the hearing, the employer introduced evidence of violations in June 2017, but did not terminate the claimant for these violations. Even though the claimant did not know the employer's policies, she did report the moving violation to her supervisor. Even so, the reporting of the violation was not necessary, as it did not occur on company time. The employer did not provide sufficient evidence of job-related misconduct. It did not meet its burden of proof to show misconduct. Benefits are allowed, provided the claimant is otherwise eligible.

**DECISION:**

The representative's January 23, 2018, decision (reference 01) is reversed. The employer has not met its burden of proof to establish job related misconduct. Benefits are allowed, provided claimant is otherwise eligible.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

bas/rvs