

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MARIA L GORDILLO**  
Claimant

**APPEAL NO. 07A-UI-00435-NT**

**ADMINISTRATIVE LAW JUDGE  
AMENDED DECISION**

**CITY OF STORM LAKE**  
Employer

**OC: 01/22/06 R: 01  
Claimant: Respondent (2)**

Section 96.5-2-a – Discharge for Misconduct  
Section 96.4-3 – Able and Available  
Section 96.3-7 – Recovery of Overpayment of Benefits

**STATEMENT OF THE CASE:**

The City of Storm Lake filed a timely appeal from the January 3, 2007, reference 02, decision that allowed benefits based upon her separation from the employer. After due notice was issued, a telephone conference hearing was held on January 31, 2007. Claimant participated. Employer participated through Paul Hoye, Misty Grey, and Jane Hill.

**ISSUE:**

The issue is whether the claimant was discharged from employment for misconduct in connection with her work, whether the claimant is able and available for work, and whether the claimant was overpaid unemployment insurance benefits.

**FINDINGS OF FACT:**

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant was employed by the City of Storm Lake from April 24, 2006 until December 13, 2006, when she was discharged from employment. Ms. Gordillo held the position of part-time library clerk and was paid by the hour.

In September 2006 the claimant, who was employed part-time, applied for a full-time position in the library. During a background check it was discovered that the claimant did not possess a valid Iowa driver's license and that her driving privileges had been suspended. Possessing and maintaining a valid Iowa driver's license was considered to be a necessary job qualification and had been included in the job description for the position that the claimant held and the position that she applied for. Because the claimant was considered to be a good employee, the decision was made not to discharge her for failing to possess or maintain the required licensing; but, instead, the claimant and employer entered into a specific agreement that if complied with, would allow the claimant to remain employed until she obtained a valid driver's license.

Under the terms of the agreement, Ms. Gordillo agreed not to drive to and from work without a valid driver's license and further agreed to obtain a valid driver's license on or before April 5,

2007. It was understood and agreed that violation of the agreement or failure to obtain the license by the specified date would result in the claimant's discharge from employment. The claimant's job position requires some driving and the City desired to foster the perception that City employees were expected to follow the law.

On December 13, 2006, the claimant was observed driving to work by a city police officer and cited for driving without a license. When the City became aware of this, that the specific agreement that allowed the claimant to continue working had been violated, Ms. Gordillo was discharged.

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

For the reasons that follow, the administrative law judge concludes that the claimant was discharged when she violated the specific terms of an agreement entered into between the claimant and the City of Storm Lake. The agreement was to temporarily allow the claimant to continue to work without possessing a valid driver's license, a job requirement. At the time that the claimant entered into the agreement with the City of Storm Lake, she clearly understood the requirement that she possess and maintain a valid Iowa driver's license in order to continue her employment. After the City had become aware that the claimant did not possess a valid driver's license, a job requirement for the position of library clerk, the City entered into an agreement to allow her to continue working for a limited period of time until she complied with the job requirements. The claimant had to agree to obtain a valid driver's license by a specified date and to in the interim and refrain from driving any motor vehicles to and from work. The connection between this requirement and the claimant's job position was the City's reasonable expectation that city employees would be law-abiding and not tarnish the reputation of the City and its employees.

The evidence is clear that the claimant understood the nature of the agreement and its requirements. Although Ms. Gordillo agreed not to drive to and from work, she did not follow the terms of the agreement she had entered into and was discharged after she was cited without a license driving to work on December 13, 2006. The claimant was discharged for a clear violation of the work-related agreement that she had freely entered into. Benefits are denied.

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.

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 administrative law judge holds that benefits shall be withheld until the claimant has worked in and been paid wages for insured work equal to ten times the claimant's weekly benefit amount because a decision has determined the claimant is ineligible to receive benefits due to a discharge for misconduct.

**DECISION:**

The January 3, 2007, reference 02, representative's decision is hereby reversed. The claimant was discharged for misconduct. Benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times the claimant's weekly benefit amount, provided the claimant is otherwise eligible. The claimant is overpaid \$1,903.00.

---

Terence P. Nice  
Administrative Law Judge

---

Decision Dated and Mailed

tpn/kjw/pjs