

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DANIELA BURR
Claimant

APPEAL NO. 07A-UI-01552-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DIAMOND JO WORTH LLC
Employer

**OC: 01/07/07 R: 02
Claimant: Respondent (1)**

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated February 8, 2007, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on February 27, 2007. The parties were properly notified about the hearing. The claimant participated in the hearing. Nancy Vine participated in the hearing on behalf of the employer with a witness, Bill Sutton.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked full time as a dealer from March 30, 2006, to December 23, 2006. The claimant was informed and understood that she was required to be licensed by the Iowa Racing and Gaming Commission (IRGC) to be employed with the employer.

Over ten years before the claimant began working for the employer, she accumulated traffic fines and civil judgments of several thousands of dollars that remained unpaid as of the time she started working for the employer. The claimant disclosed this information to the representative of the IRGC. The claimant received her license and was hired by the employer.

After she started working for the employer, a different representative of the IRGC placed the claimant's license on probation and was asked to bring in documentation regarding her financial obligations. The claimant complied and began paying on the obligations she owed. She was then removed from probation. By December 2006, the claimant had made substantial progress on paying off her fines and judgments. In mid-December, the IRGC representative required the claimant to submit documentation showing the payments she had made. The claimant complied with his requirement as well.

On December 27, 2006, the IRGC representative informed the claimant that he was revoking the claimant's license because he was dissatisfied with her efforts to clear up her financial

obligations and did not think she would follow through to finish paying them off. Since the claimant did not have a license, she lost her job with the employer.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

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 to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

While the employer may have been justified in discharging the claimant, work-connected misconduct as defined by the unemployment insurance law has not been established. The employer's witnesses admit that the claimant had no work performance problems and they would have continued the claimant's employment but for the action of the IRGC representative.

The grounds, however, for disqualification when someone is discharged are work-connected misconduct committed by the claimant. The evidence establishes the fines and judgments were incurred before the claimant began working for the employer and were disclosed. The claimant complied with each requirement imposed by the IRGC representative and made substantial efforts to clear up the matters as she was instructed to do. The fact that the employer was required to discharge the claimant after the IRGC representative revoked the license does not prove misconduct on the part of the claimant.

DECISION:

The unemployment insurance decision dated February 8, 2007, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/kjw