

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DEL J THELEN**  
Claimant

**APPEAL NO. 10A-UI-08391-S2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TRINITY REGIONAL MEDICAL CENTER**  
Employer

**OC: 05/09/10**  
**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Trinity Regional Medical Center (employer) appealed a representative's June 8, 2010 decision (reference 01) that concluded Del Thelen (claimant) was discharged and there was no evidence of willful or deliberate misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for July 30, 2010. The claimant participated personally. The employer participated by Ted Vaughn, Manager of Human Resources. The employer offered and Exhibit One 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 February 16, 2004, as a part-time valet parker. The employer did not issue the claimant any warnings during his employment. The claimant was arrested on May 9, 2010, for operating a vehicle while intoxicated. At the time of his arrest he was operating his personal vehicle and not working. The claimant held his license for ten days. Law enforcement told the claimant he could continue to park cars on private property without a drivers' license. The employer terminated the claimant on May 12, 2010.

**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). Off premises during lunch hour, claimant assaulted co-worker for alleged rumors spread by co-worker. Court of Appeals allowed benefits, noting lack of evidence of negative impact at work place plus fact that claimant finished the day before being discharged. Diggs. Employment Appeal Board, 478 N.W.2d 432 (Iowa App. 1991). In this case the claimant could continue to perform his work without a drivers' license. There was no impact on his work for his off duty conduct. The employer did not provide sufficient evidence of job-related misconduct. The claimant is eligible to receive unemployment insurance benefits.

**DECISION:**

The representative's June 8, 2010 decision (reference 01) is affirmed. The employer has not met its 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/pjs