

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JULIA M STANLEY
Claimant

APPEAL NO. 10A-UI-00968-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**DES MOINES INDEPENDENT
COMMUNITY SCHOOL DISTRICT**
Employer

OC: 12/13/09
Claimant: Appellant (1)

Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the January 11, 2010 (reference 01) decision that denied benefits. After due notice was issued, a telephone conference hearing was held on April 14, 2010. Claimant participated and was represented by Michael Burdette, Attorney at Law. Employer participated through risk manager Cathy McCay and transportation manager Todd Liston. Claimant's Exhibits A through G were admitted to the record.

ISSUE:

The issue is whether claimant was discharged for reasons related to job misconduct sufficient to warrant a denial of benefits.

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant most recently worked full-time as a bus driver from November 8, 2004 and was separated from employment on December 15, 2009. She was arrested for OWI on October 3, 2009 and the employer placed her on paid administrative leave effective October 6, 2009. On October 16 she was granted an appeal from the DOT. (Claimant's Exhibit D) On November 18 the DOT gave her notice that her personal driver's license would be revoked effective January 2, 2010 because of the test results from October 3, 2009. (Claimant's Exhibit E) On December 4, 2009 the DOT gave her notice that her commercial driver's license would be revoked effective January 8, 2010 because of the test results from October 3, 2009. (Claimant's Exhibit F) On December 3 employer sent claimant a certified letter asking her to respond with mitigating information about the revocation of the driver's license by December 11, 2009. (Claimant's Exhibit A) She did not respond and her employment was terminated.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

Iowa Code § 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.

Prior to the separation the claimant knew she would lose her driver's license because of her own illegal action of operating a motor vehicle while intoxicated. Although insurability was not at issue in this case, a valid commercial driver's license was a substantive requirement of the claimant's job duties as a school bus driver. The employer is not obligated to accommodate the claimant during license suspension period but does have a duty to protect the public safety by keeping impaired or unlicensed drivers off the road. Benefits are denied.

DECISION:

The January 11, 2010 (reference 01) decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has

worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/pjs