

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JESSICA D GATTS
Claimant

APPEAL NO. 13A-UI-02513-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

THE EASTER SEAL SOCIETY OF IOWA INC
Employer

OC: 01/27/13
Claimant: Appellant (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Jessica Gatts (claimant) appealed a representative's February 22, 2013 decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits because she was discharged from work with The Easter Seal Society of Iowa (employer) for Director of Human Resources. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for March 28, 2013. The claimant participated personally. The employer participated by Sara Hardy, Director 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 August 28, 2012, as a full-time independent living skills professional. The claimant signed for receipt of the employer's handbook on August 27, 2012. The claimant's job required her to transport clients.

On December 30, 2012, the claimant was charged with operating a motor vehicle while intoxicated (OWI) and her drivers' license was suspended. The claimant reported the OWI to the employer. The claimant continued to work until she was suspended from working on January 8, 2013. On January 24, 2013, the employer terminated the claimant for failure to have a drivers' license.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was 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). The failure of an employee to maintain a license which she must have to perform the duties of the job is misconduct. The claimant's license was removed. Her subsequent termination from employment was misconduct. She is not eligible to receive unemployment insurance benefits.

DECISION:

The representative's February 22, 2013 decision (reference 01) is affirmed. The claimant is not eligible to receive unemployment insurance benefits because the claimant was discharged from work for misconduct. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount, provided the claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/pjs