

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DEBORA A AGUILAR
Claimant

APPEAL NO. 12A-UI-06324-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MAINSTREAM LIVING INC
Employer

OC: 04/22/12
Claimant: Appellant (1)

Section 96.5(2)a - Discharge

STATEMENT OF THE CASE:

The claimant, Debora Aguilar, filed an appeal from a decision dated May 22, 2012, reference 01. The decision disqualified her from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on June 18, 2012. The claimant participated on her own behalf. The employer, Mainstream Living, participated by Human Resources Manager Marcanne Lynch.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Debora Aguilar was employed by Mainstream Living beginning June 20, 2011, as a full-time supported living technician on the overnight shift. On April 17, 2012, the claimant was summoned to a meeting with human resources representatives to discuss a complaint made by a consumer and the consumer's guardian. During that meeting, it was also discussed there was a rumor Ms. Aguilar had been arrested.

The claimant admitted she had been charged with an "open container" violation and she had a hearing scheduled the next morning. The employer informed her if she was found guilty, there was a possibility she could not longer work for the facility. She was asked to notify the employer of the outcome of the hearing. The next day, Ms. Aguilar notified Mainstream Living she had pled guilty to the open container violation and she was immediately placed on suspension. The employer applied to the Iowa Department of Human Services (IDHS) to seek permission to continue to retain her as an employee.

As of May 21, 2012, she was approved by IDHS to remain employed and she returned to work full time May 31, 2012.

REASONING AND CONCLUSIONS OF 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(9) provides:

(9) Suspension or disciplinary layoff. Whenever a claim is filed and the reason for the claimant's unemployment is the result of a disciplinary layoff or suspension imposed by the employer, the claimant is considered as discharged, and the issue of misconduct must be resolved. Alleged misconduct or dishonesty without corroboration is not sufficient to result in disqualification.

The claimant was suspended after pleading guilty to a criminal charge and remained in a non-pay, non-work status until the IDHS approved her return to work. Under the provisions of the above Administrative Code section, this is the same as a discharge for misconduct and the claimant is disqualified.

DECISION:

The representative's decision of May 22, 2012, reference 01, is affirmed. Debora Aguilar is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount in insured work, provided she is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/kjw