

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JENNIFER CIPRIANI**  
Claimant

**APPEAL NO. 09A-UI-17208-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**PER MAR SECURITY & RESEARCH CORP**  
Employer

**Original Claim: 10-04-09  
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the November 3, 2009, reference 02, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on December 22, 2009. The claimant participated in the hearing. Randy Mulder, General Manager, and Shauna Webster, Branch Human Resources Representative, participated in the hearing on behalf of the employer.

**ISSUE:**

The issue is whether the employer discharged the claimant for work-connected misconduct.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time security officer for Per Mar Security from January 16, 2009 to June 22, 2009. The claimant completed her state licensing paperwork at the time of hire and the employer was supposed to submit it to the State, which was expected to return it in two weeks. Linda Stevens, Program Coordinator, Private investigative/Security Agency Licensing Section for the Department of Public Services, received the claimant's identification card application June 10, 2009. The claimant and her soon to be ex-husband each took out no-contact orders against each other in March 2009. By the time Ms. Stevens received the claimant's application and ran the background check, the no-contact order showed up and her license was denied. The claimant's supervisor told her they usually overlooked no-contact order issues and there were other employees working there with no-contact orders in place. He also told her she would be suspended for six months rather than discharged. The employer's general manager testified the employer does not suspend employees, however, and consequently, the employer terminated the claimant's employment for her inability to be licensed.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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.

871 IAC 24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

The employer has the burden of proving disqualifying misconduct. 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). The employer's witness accepted responsibility for the mistakes made by the employer in sending the claimant's licensing application in to be processed by the State within the first two weeks of her employment. The application was not received by the State until June 10, 2009, nearly five months after she started her employment. While the claimant did have a no-contact order issued against her in March 2009, it would not have been on her record if sent in by the employer in a timely manner, and the employer interprets its policy of having employees report any changes in their criminal history after they begin their employment as having to report

criminal convictions, not charges. Under these circumstances, the administrative law judge must conclude there was neither a current act of misconduct nor any act of misconduct on the part of the claimant at all. The employer had the ability to learn the claimant could not be licensed within the first two weeks of her first employment but, because of their errors, failed to do so. Consequently, the employer has not met its burden of proving disqualifying job misconduct as defined by Iowa law. Therefore, benefits are allowed.

**DECISION:**

The November 3, 2009, reference 02, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/kjw