

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) – 3091078 - EI

ANDREW C HINMAN
Claimant

APPEAL NO. 07A-UI-03880-DW

**ADMINISTRATIVE LAW JUDGE
DECISION**

THE UNIVERSITY OF IOWA
Employer

OC: 03/04/07 R: 03
Claimant: Appellant (1)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Andrew C. Hinman (claimant) appealed a representative's April 5, 2007 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits, and the account of The University of Iowa (employer) would not be charged because the claimant had been discharged for disqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, an in-person hearing was held on July 11, 2007, in Cedar Rapids. The claimant participated in the hearing with his attorney, Lynn Rose. David Bergeon and Dr. Larry Weber appeared on the employer's behalf. During the hearing, Employer Exhibits One and Two and Claimant Exhibits A and C were offered and admitted as evidence. Claimant Exhibits B and D were offered, but the ruling as to their admissibility was reserved. As of the date of this decision, Claimant Exhibits B and D are also admitted as evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on July 30, 2003. The claimant worked full-time as machinist for the employer's hydraulic lab. In addition to making large scale models and helping students with projects, the claimant was also required to drive to remote locations for field research. At times, the claimant drove students to research sites.

About two years ago when another employee, who was hired under the condition that he had a chauffeur's license, was suspended from driving any of the employer's vehicles, the employer initially tried to find work that did not require that employee to drive. After this employee's employment ended, the claimant's supervisor told the claimant and all the shop employees that in the future if an employee had an OWI conviction, under the employer's policy (Employer Exhibit One), the employee would be discharged because the employer would not make accommodations for that employee.

After the claimant had an OWI conviction, the employer revoked his driving privileges. As a result of this action, the claimant could no longer do any driving. Even though the claimant did not drive all the time, some of his job duties required him to drive to research sites and to transport students to research sites. When the employer revoked his driving privileges, the claimant could not perform some of his job duties. The employer discharged the claimant on March 9, 2007, because he could no longer perform all of his work duties. If the claimant had not been guilty of an OWI, his driving privileges would not have been revoked by the employer and his employment would have continued.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. 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 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).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

In Kleidosty v. EAB, 482 N.W.2d 416, 418 (Iowa 1992), the Court held that the violation of a specific work rule, even off-duty, can constitute misconduct. In this case, the claimant knew or should have known that if he or any other employee was guilty of an OWI, the employer would revoke his driving privileges for three years and he would not be able to perform part of his job duties, driving to research sites. Even though driving was not a major part of the claimant's job, the employer was not obligated to make accommodations by having him ride with other employees to remote research sites when in the past the claimant drove himself and sometimes students to the sites. Based on the facts in this case, the employer discharged the claimant for a reason that constitutes work-connected misconduct. Therefore, as of March 4, 2007, the claimant is not qualified to receive unemployment insurance benefits.

DECISION:

The representative's April 5, 2007 decision reference 01) is affirmed. The employer discharged the claimant for off-duty conduct that amounts to work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of March 4, 2007. This

disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css