

IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI

STACI L FLINN  
310 S MAIN  
BLAKESBURG IA 52536

CAPTAIN & COMPANY LTD  
26067 – 141<sup>ST</sup> RD  
STOCKPORT IA 52651

Appeal Number: 05A-UI-02434-CT  
OC: 01/30/05 R: 03  
Claimant: Respondent (1)

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Captain & Company, Ltd. filed an appeal from a representative's decision dated March 2, 2005, reference 02, which held that no disqualification would be imposed regarding Staci Flinn's separation from employment. After due notice was issued, a hearing was held by telephone on March 24, 2005. Ms. Flinn participated personally. The employer participated by Jane Scales, Office Manager.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all the evidence in the record, the administrative law judge finds: Ms. Flinn was employed by Captain & Company, Ltd. from August 6, 2004 until January 28, 2005 as a cleaning technician. Her job involved traveling to various locations in a company vehicle to perform cleaning after fires had occurred. The number of hours she worked varied depending on the availability of work. Ms. Flinn was required to have a valid driver's license in order to drive company vehicles. She had a valid license at the time of hire.

Ms. Flinn lost her license on October 30, 2004 but did not notify the employer. The other crew members who worked with her did all of the driving after she lost her license. On November 14, the employer learned that Ms. Flinn no longer had a valid license. The employer decided to allow her to remain in the employment because her coworkers were willing to perform all of the driving. On or about January 28, 2005, the employer decided that the arrangement was no longer feasible and, therefore, discharged Ms. Flinn. The loss of her driver's license was the sole reason for the discharge.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. Flinn was separated from employment for any disqualifying reason. An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). A disqualification from benefits may only be imposed where there is a current act of misconduct. See 871 IAC 24.32(8). In the case at hand, Ms. Flinn was discharged because she no longer had a valid driver's license. However, this was a fact known to the employer on November 14. The employer did not at that time discharge Ms. Flinn, either because she no longer had a license or because she failed to immediately disclose the loss of the license.

The employer waited over two months before discharging Ms. Flinn because she no longer had a license. Given this delay, the administrative law judge concludes that the discharge was not predicated on a current act of misconduct. Accordingly, no disqualification is imposed.

DECISION:

The representative's decision dated March 2, 2005, reference 02, is hereby affirmed. Ms. Flinn was discharged but not for a current act of misconduct. Benefits are allowed, provided she satisfies all other conditions of eligibility.

cfc/kjf