

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**THERESA M COLVIN**  
Claimant

**APPEAL NO. 10A-UI-07019-H2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**COMMUNITY CARE INC**  
Employer

**Original Claim: 04-04-10  
Claimant: Appellant (1)**

Iowa Code § 96.5(2)a – Suspension/Misconduct

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the May 7, 2010, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on June 29, 2010. The claimant did participate. The employer did participate through Ginger Pingel, Human Resources Assistant, and Brooke Lee, Home and Community Based Services Supervisor.

**ISSUE:**

Was the claimant suspended due to job 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 direct support professional, full-time, beginning February 9, 2006 through April 1, 2010, when she was suspended after she lost her driver's license due to an operating while under the influence of alcohol charge she received in her own vehicle on her own time. The claimant lost her driver's license, a necessary requirement of her job, on April 1, 2010 and will not be eligible to regain her license until March 20, 2011. The claimant has applied for a work permit but was denied, as her most recent charge was her second OWI. Part of the claimant's job duties require that she be able to drive the residents to and from appointments, as she is charged with taking them to their necessary appointments. The claimant knew that she was required to have a valid driver's license to maintain her employment. The employer is willing to keep the claimant on suspended status for up to one year, while she works to get her driver's license back.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was suspended employment due to job-related misconduct.

Iowa Code § 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.

Repeated traffic violations rendering a claimant uninsurable can constitute job misconduct even if the traffic citations were received on the claimant's own time and in his own vehicle. *Cook v. IDJS*, 299 N.W.2d 698 (Iowa 1980).

The claimant lost her driver's license because of her own illegal action of operating a motor vehicle while intoxicated. Although insurability was not at issue in this case, a valid driver's license was a substantive requirement of the claimant's job duties as a direct support profession. The employer is not obligated to accommodate the claimant during license suspension period but does have a duty to protect the public safety by keeping impaired or unlicensed drivers off the road. The employer is not required to accommodate the claimant during the license suspension period when she was unable to legally perform the essential functions of her job. Benefits are denied while the claimant is suspended and unable to perform the essential functions of her job due to her loss of her driver's license.

**DECISION:**

The May 7, 2010 (reference 01) decision is affirmed. The claimant was suspended from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

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Teresa K. Hillary  
Administrative Law Judge

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Decision Dated and Mailed

tkh/kjw