

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MARY A TEDESCO**  
Claimant

**APPEAL NO. 13A-UI-10799-S2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ROBERT HALF CORPORATION**  
Employer

**OC: 10/21/12  
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Mary Tedesco (claimant) appealed a representative's September 13, 2013, decision (reference 02) that concluded she was not eligible to receive unemployment insurance benefits because she was discharged from work with Robert Half Corporation (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for October 16, 2013. The claimant participated personally. The employer participated by Susie Artis, Branch Manager.

**ISSUE:**

The issue is whether the claimant was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired in March 2009, as a temporary employee. She was rehired on November 13, 2012, as a temporary employee. On or about November 13, 2012, the claimant completed an Employment Application. She indicated that she had a prior conviction for operating a vehicle while intoxicated (OWI) and a conviction for contempt of court. She did not certify that her answers were correct.

On August 19, 2013, the claimant was assigned to work at Ryko Solutions and the employer was required to complete a background check on the claimant. In doing so the employer found some charges on the claimant's background checks. The employer thought the claimant had answered no to a question about whether she had been convicted of any felonies or misdemeanors. The employer terminated the claimant on August 22, 2013, for misrepresentation on her August 22, 2013, form.

**REASONING AND CONCLUSIONS OF LAW:**

The issue is whether the claimant is disqualified. For the following reasons the administrative law judge concludes she is not.

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(6) provides:

(6) False work application. When a willfully and deliberately false statement is made on an Application for Work form, and this willful and deliberate falsification does or could result in endangering the health, safety or morals of the applicant or others, or result in exposing the employer to legal liabilities or penalties, or result in placing the employer in jeopardy, such falsification shall be an act of misconduct in connection with the employer.

The employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The employer did not provide sufficient evidence of job-related misconduct. The claimant did not deny that she was convicted of a crime on her job application. The employer did not meet its burden of proof to show misconduct. Benefits are allowed.

The claimant's and the employer's testimony is inconsistent. The administrative law judge finds the claimant's testimony to be more credible. The employer did not have a copy of the application in front of her at the time of the hearing and did not recall what was on the application. The claimant was the person who completed the application.

**DECISION:**

The representative's September 13, 2013, decision (reference 02) is reversed. The employer has not met its proof to establish job-related misconduct. Benefits are allowed.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

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