

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOAN JANSSEN
Claimant

APPEAL NO. 11A-UI-07525-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

**DES MOINES REGIONAL
TRANSIT AUTHORITY**
Employer

OC: 05-08-11
Claimant: Appellant (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the May 31, 2011, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on July 5, 2011. The claimant participated in the hearing. Randy Ross, director of human resources, and Randy McKern, transportation manager, 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 part-time bus operator for Des Moines Regional Transit Authority from September 29, 2009 to May 10, 2011. On May 3, 2011, the claimant was transporting Brody Middle School students home from school. A student or students were spraying Axe Body Spray on the bus. The claimant became upset because sprays like that can cause her headaches and make it difficult for her to breathe. She demanded to know who was spraying the Axe and none of the students took responsibility. The claimant told the students if she did not learn who was spraying it and if it did not stop, she would not stop the bus at the designated bus stop. When no one confessed, the claimant skipped the first designated bus stop and drove to the next stop, approximately one and one-half blocks away, and let 15 to 18 students, out of a total of 25, off the bus at the second stop. A parent who had been following the bus called the employer's customer service department and made a complaint, which led the employer to investigate the incident. On May 6, 2011, it held a fact-finding interview with the claimant and her union steward. The claimant said reports of the incident were "partially" true and admitted she had done the same thing in the past as a disciplinary measure. The employer's policy, as well as its contract with the Des Moines Community School District, calls for the driver to complete a report to the employer, which is faxed to the dean of students of the school involved, when disciplinary problems arise. The claimant was suspended at that time. After completing its investigation into the incident, the employer terminated the claimant's

employment May 10, 2011, for conduct unbecoming a bus operator. The four factors cited in that determination were the claimant's "refusal to discharge students at designated stops as mandated by the employer's contract with the school district; willfully taking unauthorized disciplinary action against students; failure to report disciplinary problems to the employer and the school; and failure to notify the dispatcher of a deviation of service or being off route." The employer's last paragraph of the termination report stated that the claimant exhibited poor judgment in her willful actions against the Brody Middle School students to resolve behavioral issues.

REASONING AND CONCLUSIONS OF LAW:

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

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.

The claimant chose not to make a designated stop, as mandated by the employer's contract with the Des Moines Public School District, as a disciplinary action against students spraying Axe Body Spray on the bus, which irritated her. None of the other students on the bus complained to the claimant about the situation. The employer's policy states that drivers are expected to complete a report when a disciplinary problem arises, which can then be faxed to the dean of students at that particular school. Instead of following that policy, the claimant imposed her own disciplinary action without regard to the employer's policy and admitted she

had skipped a stop for the same reason on at least three previous occasions involving other students. Her actions were inappropriate and unprofessional; and if anything had happened to any of the students dropped off at the wrong stop, it would have exposed the employer to liability. Under these circumstances, the administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Therefore, benefits must be denied.

DECISION:

The May 31, 2011, reference 01, decision is affirmed. The claimant was discharged 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.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/kjw