

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TYKISHIA J GRIFFITH
Claimant

APPEAL NO: 13A-UI-12793-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

FEDERAL EXPRESS CORP
Employer

**OC: 10/20/13
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge
871 IAC 24.32(1) – Definition of Misconduct

STATEMENT OF THE CASE:

The claimant appealed a department decision dated November 14, 2013, reference 01, that held she was discharged for misconduct on October 10, 2013, and benefits are denied. A telephone hearing was held on December 9, 2013. The claimant participated. The employer did not participate.

ISSUE:

Whether claimant was discharged for misconduct in connection with employment.

FINDINGS OF FACT:

The administrative law judge having heard the witness testimony and having considered the evidence in the record finds: The claimant was hired on November 2, 2012, and last worked for the employer as a full-time courier driver on October 10, 2013. The employer terminated claimant for failing to timely report a traffic violation. Claimant did let the employer know about it before it ran a review MVR report. Claimant had not been previously disciplined for this type of issue.

The employer failed to respond to the hearing notice and provide a name with telephone number to be called for the hearing. The UI Appeals C2T control system has no record of an employer call for the hearing.

REASONING AND CONCLUSIONS OF LAW:

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 administrative law judge concludes employer failed to establish claimant was discharged for misconduct on October 10, 2013 for violation of company policy. The employer failed to participate in this hearing and offer evidence of job disqualifying misconduct.

DECISION:

The department decision dated November 14, 2013, reference 01, is reversed. The claimant was not discharged for misconduct on October 10, 2013. Benefits are allowed, provided claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

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