

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TRACY E WHEAT
Claimant

APPEAL NO. 10A-UI-04089-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

WATERLOO WILBERT VAULT CO
Employer

OC: 04-19-09
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the March 9, 2010, reference 05, decision that denied benefits. After due notice was issued, a hearing was held on April 26, 2010. The claimant did participate. The employer did participate through Eric Lewis, President.

ISSUE:

Did the claimant voluntarily quit his employment without good cause attributable to the employer or was he discharged due to job related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a delivery truck driver of cemetery vaults full time beginning June 27, 2009 through February 10, 2010 when he was discharged. The claimant lost his driver's license on January 30, 2010 when he was cited for driving under the influence. The claimant as a delivery driver was required to have a valid driver's license as driving the delivery truck was his primary job duty. He was told that his last day would be February 10 as the employer was not willing to keep him employed without a driver's license. At the time of the hearing, the claimant still did not have a valid driver's license.

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 § 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.

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 his driver's license because of his 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 delivery driver. 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 he was unable to legally perform the essential functions of his job. Benefits are denied.

DECISION:

The March 9, 2010 (reference 05) decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has

worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/pjs