

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ALFRED J OMENDA
Claimant

APPEAL NO: 12A-UI-14821-D

**ADMINISTRATIVE LAW JUDGE
DECISION**

IOWA HOME CARE LLC
Employer

OC: 09/30/12

Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Alfred J. Omenda (claimant) appealed a representative's December 10, 2012 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment from Iowa Home Care, L.L.C. (employer). After hearing notices were mailed to the parties' last known addresses of record, an in-person hearing was held on January 30, 2013. The claimant participated in the hearing. Rachel Edge appeared on the employer's behalf and presented testimony from one other witness, Jenny Holtorf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant discharged for work-connected misconduct?

OUTCOME:

Affirmed. Benefits denied.

FINDINGS OF FACT:

The claimant started working for the employer on February 5, 2008. He worked full time as home health aide in the employer's clients' homes. His last day of work was August 10, 2011. The employer discharged him on that date. The stated reason for the discharge was having no driver's license as required for his job and failing to report the loss of his license to the employer as required.

The employer required each home health aide to have a valid driver's license; it did not permit the aides to get other rides to the clients' homes due to privacy restrictions. The employer's policies also specified that an employee whose license was subject to some restrictive action was required to report that to the employer within 48 hours. On April 22, 2011 the claimant was arrested and charged with operating a motor vehicle while intoxicated (OWI), which would automatically result in the revocation of his license. He did not inform the employer in April of

the arrest. The revocation of the license became effective as of July 23, 2011; he did not inform the employer of the license revocation in July.

On August 9, 2011 the employer randomly ran a license status check on some employees, including the claimant. That record check revealed that the claimant had not had a license since July 23. Although the claimant had not reported the OWI or the loss of his license, he had continued to work and to go to the clients' homes. On August 10 the employer brought the claimant in for a discussion, at which time he acknowledged that he had lost his license and that he had not otherwise reported this to the employer. As a result, the employer gave the claimant the choice to either quit or be discharged; however, the claimant did not have an option that would allow him to continue working for the employer.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not eligible for unemployment insurance benefits if he quit the employment without good cause attributable to the employer or was discharged for work-connected misconduct. Iowa Code §§ 96.5-1; 96.5-2-a. The claimant did not have the intent to sever the employment relationship necessary to treat the separation as a "voluntary quit" for unemployment insurance purposes; he did not have the option to continue his employment; he could either quit or be discharged. 871 IAC 24.26(21). As the separation was not a voluntary quit, it must be treated as a discharge for purposes of unemployment insurance.

The issue then is whether the employer effectively discharged the claimant for reasons establishing work-connected misconduct as defined by the unemployment insurance law. The issue is not whether the employer was right or even had any other choice but to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. IDJS*, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988). A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982).

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445 (Iowa 1979); *Henry v. Iowa Department of Job Service*, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. 871 IAC 24.32(1)a; *Huntoon*, supra; *Henry*, supra. In contrast, 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(1)a; *Huntoon*, supra; *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984).

The claimant's loss of his required license together with his failure to properly report the action against his license to the employer shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer.

DECISION:

The representative's December 10, 2012 decision (reference 01) is affirmed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of August 10, 2012. This disqualification continues until the claimant has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/css