

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TERRY R BRITT
Claimant

APPEAL NO. 10A-UI-01617-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CENTRAL IOWA HOSPITAL CORP
Employer

**Original Claim: 05/31/09
Claimant: Appellant- (2)**

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The claimant appealed a representative's January 26, 2010 decision (reference 01) that concluded he was not qualified to receive benefits, and the employer's account was exempt from charge because the claimant voluntarily quit his employment for reasons that do not qualify him to receive benefits. A telephone hearing was held on March 10, 2010. The claimant participated in the hearing. The employer's witness was called, but she was not available for the scheduled hearing. After the hearing closed and the claimant had been excused, the employer contacted the Appeals Section. The employer did not request that the hearing be reopened.

Based on the evidence, the arguments of the claimant, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the claimant voluntarily quit his employment without good cause attributable to the employer, or did the employer discharge him for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on July 15, 2009. The claimant worked as full-time grounds keeper. The claimant's job required him to possess a driver's license because he drove to various locations for his job.

The claimant was arrested and charged with an OWI for sleeping in a parking lot in a vehicle. The claimant knew that as a result of his arrest, he would lose his driver's license for 30 days. The claimant told the employer he would lose his license on January 1, 2010. The employer would not allow the claimant to continue working with a work permit even though the claimant challenged the OWI charge. The employer informed the claimant he would be discharged on January 1, the day he lost his license for 30 days. Instead of having a discharge on his employment record, the claimant submitted his resignation on December 29, 2009.

The claimant initially established a claim for benefits during the week of May 31, 2009. He reopened his claim the week of January 10, 2010.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if he voluntarily quits employment without good cause attributable to the employer, or an employer discharges him for reasons constituting work-connected misconduct. Iowa Code §§ 96.5-1, 2-a. Since the employer would not allow the claimant to continue his employment after he lost his driver's license, and the claimant did not reopen his claim until after January 1, 2010, for unemployment insurance purposes, the employer discharged the claimant.

Misconduct is defined as a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good-faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The employer discharged the claimant because he lost his driver's license for 30 days and was unable to perform his job unless the employer allowed him to drive with a work permit. The employer would not make this accommodation. When the claimant did not have a driver's license for 30 days, he was unable to perform his job.

Since the claimant has challenged the OWI citation, the facts do not establish that the claimant's off-duty conduct amounts to work-connected misconduct. The evidence does not establish the claimant is innocent or guilty of the OWI. Based on the evidence presented during the hearing, the facts do not establish that the claimant committed work-connected misconduct. Therefore, as of January 10, 2010, the claimant is qualified to receive benefits.

The employer is not one of the claimant's current base period employers. During the claimant's current benefit year, the employer's account will not be charged.

DECISION:

The representative's January 26, 2010 decision (reference 01) is reversed. The employer discharged the claimant for justifiable business reasons, but the evidence does not establish that the claimant committed work-connected misconduct. As of January 10, 2010, the claimant is qualified to receive benefits, provided he meets all other eligibility requirements. During the claimant's current benefit year, the employer's account will not be charged.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw