

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

**MILAD K ELORM
3901 LENNOX AVE NE
CEDAR RAPIDS IA 52402**

**GREG'S LAWN SERVICE INC
1480 PROGRESS DR
HIAWATHA IA 52233-2206**

**Appeal Number: 04A-UI-00294-CT
OC: 11/23/03 R: 03
Claimant: Appellant (1)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Milad Elorm filed an appeal from a representative's decision dated January 7, 2004, reference 01, which denied benefits based on his separation from Greg's Lawn Service, Inc. After due notice was issued, a hearing was held by telephone on February 2, 2004. Mr. Elorm participated personally. The employer participated by Greg Scharf and Donna Scharf, Owners.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all the evidence in the record, the administrative law judge finds: Mr. Elorm was employed by Greg's Lawn Service, Inc. from May 5 until October 24, 2003 as a full-time chemical applicator. His job required him to drive the employer's vehicle to various locations to apply chemicals to lawns. He knew that his job required him to have a valid driver's license and that he be insurable.

On or about October 24, 2003, Mr. Elorm lost his driver's license for three months. He received a speeding ticket during the employment but not while driving the employer's vehicle. This speeding ticket, when combined with his prior driving record, rendered him uninsurable by the employer's insurance carrier. Mr. Elorm will be required to have SR-22 insurance for at least another seven to eight months. The employer's carrier will not provide this insurance. The employer could not allow Mr. Elorm to continue driving its vehicles and did not have other, non-driving work available for him. The above matter was the sole reason for the separation.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Elorm was separated from employment for any disqualifying reason. Although the employer classifies the separation as a quit, the administrative law judge concludes that it was a discharge as it was the employer's decision that Mr. Elorm could no longer work for the company because he lost his driver's license and his insurability. An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct in connection with the employment. The employer had the burden of proving disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982).

Mr. Elorm knew that he needed a valid driver's license in order to perform his job. He also knew that repeated traffic violations might cause him to lose his license as well as his ability to be covered by the employer's insurance. In spite of this knowledge, he was cited for speeding during the employment. Although this was in his private vehicle, it effected his license to drive. Where an individual's own conduct causes him to be unemployable by his employer, he is considered guilty of misconduct within the meaning of the law. See Cook v. Iowa Department of Job Service, 299 N.W.2d 698 (Iowa 1980). Therefore, Mr. Elorm's failure to maintain a valid driver's license constituted disqualifying misconduct. Accordingly, benefits are denied.

DECISION:

The representative's decision dated January 7, 2004, reference 01, is hereby affirmed as to result. Mr. Elorm was discharged for disqualifying 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 job insurance benefit amount, provided he satisfies all other conditions of eligibility.

cfc/kjf