

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**MARTIN R ANNIS**  
Claimant

**CITY OF IOWA CITY**  
Employer

**APPEAL 17A-UI-07514-NM-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 07/02/17**  
**Claimant: Appellant (2)**

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

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the July 18, 2017, (reference 01) unemployment insurance decision that denied benefits based upon the suspension of his driver's license. The parties were properly notified of the hearing. A telephone hearing was held on August 11, 2017. The claimant participated and testified. The employer participated through Assistant City Attorney Eric Goers and witnesses Elyse Miller, Susan Craig, and Brad Gehrke. Employer's Exhibit 1 and claimant's Exhibits A and B were received into evidence.

**ISSUE:**

Was the claimant discharged for disqualifying job-related misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a custodian from February 3, 2016, until this employment ended on June 23, 2017, when he was discharged.

On June 6, 2017, claimant informed the employer his driver's license had been suspended following an incident unrelated to his work. Having a valid driver's license is listed as a job requirement for claimant's position. (Exhibit 1). The employer testified the reason this is a job requirement is because individuals in claimant's position may be required to make deliveries or address emergency situations off location, such as those involving remote book drops. Claimant worked the overnight shift and every seventh Saturday. Both parties agreed that, in his approximately one and a half years of employment, claimant had never been required to do any driving as part of his job. The employer further agreed it was highly unlikely claimant would ever have to drive as part of his job duties. Claimant testified he had reliable transportation to and from work and could arrange for transportation should it be needed while doing his job duties. The employer testified this would not be acceptable as claimant would have to use the city vehicle, which has a hydraulic lift, in the event of an emergency situation that required something heavy, like one of the remote book drops, to be lifted and that he could not do this without a valid license. The employer also acknowledged there had never been a situation

where claimant had to use the city vehicle. Once the employer learned claimant no longer possessed a valid license, it informed him he would be terminated from employment. Though claimant was notified of the decision to end his employment on June 6, the employer allowed him to remain on the payroll, but not working, until June 23, 2017 so he could utilize paid sick leave he had earned in order to seek treatment for a medical condition.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa

Ct. App. 1984). Misconduct must be “substantial” to warrant a denial of job insurance benefits. *Newman v. Iowa Dep’t of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984).

In an at-will employment environment an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, it incurs potential liability for unemployment insurance benefits related to that separation. A determination as to whether an employee’s act is misconduct does not rest solely on the interpretation or application of the employer’s policy or rule. A violation is not necessarily disqualifying misconduct even if the employer was fully within its rights to impose discipline up to or including discharge for the incident under its policy.

Claimant was discharged after the employer learned his driver’s license was suspended following an incident unrelated to his work. The reason claimant was discharged was because having a valid driver’s license is listed as a requirement of his position. Both parties testified, however, that in his entire time of employment, claimant had never been required to drive for his position and, barring a freak accident, claimant would likely never have to drive as part of his position. While the employer has shown that a valid driver’s license is a peripheral requirement of claimant’s job and would be necessary under very unlikely and remote circumstances, it has not shown it is an essential function of his position, as he has never once been required to drive and all parties agree it would be highly unlikely he would ever be required to drive. As the employer has not shown claimant’s loss of his driver’s license is sufficiently connected to his job, it cannot show job related misconduct, as is its burden. Accordingly, benefits are allowed, provided claimant is otherwise eligible.

**DECISION:**

The July 18, 2017, (reference 01) unemployment insurance decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

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Nicole Merrill  
Administrative Law Judge

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Decision Dated and Mailed

nm/rvs