

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

TERESA J JOHNSON
Claimant

APPEAL NO. 18A-UI-05585-TN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CONCERNED INC
Employer

OC: 04/22/18
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

Teresa J. Johnson, the claimant, filed a timely appeal from a representative's unemployment insurance decision dated May 10, 2018, reference 01, which denied unemployment insurance benefits, finding that the claimant was discharged from work on April 23, 2018 for having too many accidents for which the claimant was found to be at fault. After due notice was provided, a telephone hearing was scheduled for and held on June 6, 2018. Claimant participated. The employer participated by Ms. Staci Hess, Human Resources Director, and Ms. Niki Farrell, Hourly Coordinator.

ISSUE:

The issue is whether the claimant was discharged for work-connected misconduct sufficient to warrant a denial of unemployment insurance benefits.

FINDINGS OF FACT:

Having considered all of the evidence in the record, the administrative law judge finds: Teresa Johnson was employed by Concerned, Inc. from February 7, 2012 until April 23, 2018, when she was discharged by the employer because she was no longer insurable with the company's automobile insurance carrier. Ms. Johnson was employed as full-time SCL hourly counselor and was paid by the hour. Her immediate supervisor was Ms. Niki Farrell.

Ms. Johnson was separated from her employment with Concerned, Inc. on April 23, 2018 after the company was informed by its insurance company that they would no longer insure Ms. Johnson while driving company vehicles.

Ms. Johnson had been involved in two incidents while driving company vehicles in January 2018 that had resulted in casualty losses to the insurance company, however, Ms. Johnson had not been issued any driving citations by law enforcement although they were aware of both driving accidents.

In the first incident, Ms. Johnson slid into another vehicle while operating a company van in an icy parking lot. During the second incident, approximately one week later, Ms. Johnson had

“blacked out” while backing up the company van, in the company’s parking lot, and struck another employee, that person’s vehicle, and the company’s building, causing a substantial casualty loss to the insurance carrier. Ms. Johnson was hospitalized following the accident because she had “blacked out”. It was later medically determined that Ms. Johnson had suffered a spike in blood pressure that had caused her to lose consciousness while backing up.

After Ms. Johnson had been hospitalized for a period of time because of her medical condition, she was released for limited work and returned to her employment on February 14, 2018. Ms. Johnson was not medically authorized to drive clients at the time that she returned to work, but was later authorized to do so by her rehabilitation therapist. During this time, Concerned, Inc. assigned Ms. Johnson to work with other hourly coaches under a “carpooling” arrangement where other hourly counselors performed driving duties for the clients. Both Ms. Johnson and her employer anticipated that she would return to her regular duties when she was authorized by her caregiver to resume driving clients.

After being informed by the company that the insurance carrier would no longer insure her and she would lose her job, the claimant looked for an insurance carrier that would insure her while she used her own vehicle to transport clients on a full-time basis and thus, allow her to keep her employment. The claimant’s offer was communicated to the organization’s executive director, but denied based upon the employer’s policy of requiring counselors to use the company’s vehicles to transport clients on a regular basis, and allowing only limited intermittent use of personal vehicles for these purposes. The employer was also concerned about additional costs to the organization by the mileage for the use of personal vehicles. The company was also concerned because this authorization had not been given to any other employees who were similarly situated. Ms. Johnson was discharged from her employment because the company’s insurance carrier was no longer willing to insure her.

REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual’s wage credits:

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 disqualification shall continue 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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proving disqualifying misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The propriety of the discharge is not the issue in this matter. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct sufficient to withhold unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrong-doing or repeated carelessness or negligence that equals misconduct in culpability. See *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 665 (Iowa 2000).

In the case at hand, the claimant was involved in two driving mishaps that resulted in the monetary losses to the company's insurance carrier. Ms. Johnson had not been determined to be legally at fault in either incident and had received no driving citations. The first incident had occurred because of icy driving conditions and the officers who had responded to Ms. Johnson's call determined she was not at fault and should not receive a driving citation. In the second incident, Ms. Johnson had "blacked out" while backing up in the company's parking lot, causing the company vehicle that Ms. Johnson was driving to strike another vehicle and the company's building. Ms. Johnson was hospitalized and it was determined that the cause of her losing consciousness was an unexpected spike in her blood pressure that was beyond her control. Prior to receiving notice from the insurance company that they would no longer insure Ms. Johnson, the employer had intended to continue to employ the claimant and to have her resume her normal duties, which included driving vehicles and clients, as soon as she was medically released to drive clients. The sole reason for the decision to terminate Ms. Johnson on April 23, 2018, was because the company's insurance carrier had chosen to no longer insure Ms. Johnson while driving Concerned, Inc. vehicles. The claimant had offered a reasonable alternative to the employer, but the employer, for business reasons, chose not to approve it.

In this case, the claimant's loss of insurability with the company's insurance carrier was not tied to a bad driving record or any recent incidents where the claimant was determined to be "at fault", but due solely to the decision of a third party entity to minimize future risks by excluding Ms. Johnson as a covered driver. The employer made a business decision not to allow the claimant to continue to car-pool the transportation of clients to transport them in her vehicle with proper insurance as to perform other work.

The question before the administrative law judge in this case is not whether Concerned, Inc. had a right to discharge Ms. Johnson for these reasons, but whether her discharge disqualifies her for benefits under the provisions of the Iowa Employment Security Law. While the decision to separate Ms. Johnson from her employment may have been a sound decision from a management viewpoint, the administrative law judge concludes that the evidence in the record

does not establish intentional disqualifying work-connected misconduct on the part of the claimant sufficient to warrant the denial of unemployment insurance benefits. Accordingly, the claimant is held eligible for benefits, provided that she meets all the eligibility requirements of Iowa law.

DECISION:

The representative's unemployment insurance decision dated May 10, 2018, reference 01, is reversed. Claimant was discharged under non-disqualifying conditions. Unemployment insurance benefits are allowed, provided the claimant meets all the eligibility requirements of Iowa law.

Terry P. Nice
Administrative Law Judge

Decision Dated and Mailed

rvs/rvs