

**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**

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**MAINSTREAM LIVING INC
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**Appeal Number: 04A-UI-10914-ET
OC: 09-12-04 R: 02
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/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the October 1, 2004, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on November 2, 2004. The claimant participated in the hearing with Attorney Robert Wright Jr. Barbara Bravard, Human Resources Manager; William Vaughn, Director of Community Support Advocate; and Christina Smith, Director of Integrated Services Program, participated in the hearing on behalf of the employer. Employer's Exhibits One through Six were admitted into evidence.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time client advocate for Mainstream Living from January 21, 2003 to September 3, 2004. The claimant's position required that she "qualify with the company's underwriter as an insurable driver and possess legal driving privileges in the State of Iowa: (Employer's Exhibit One). During an investigation of another incident the employer learned the claimant's driver's license expired May 3, 2004, and she did not renew it within the 60 day "grace period." The claimant was aware her license was expired but did not notify the employer and continued transporting clients without a license until she was suspended August 20, 2004, pending further investigation of the other matter. On August 31, 2004, the employer sent the claimant a certified letter informing her that effective August 30, 2004, her employment was terminated for failing to maintain a valid driver's license and for failing to be insurable (Employer's Exhibits Four and Six). The claimant continues to take the written driver's license examination but has not successfully passed it as of the date of the hearing.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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 proving disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Repeated traffic violations rendering a claimant uninsurable can constitute job misconduct even if the traffic citations were received on the claimant's own time and in his own vehicle. Cook v. IDJS, 299 N.W.2d 698 (Iowa 1980). The claimant lost her driver's license because of her own actions in failing to renew her driver's license in a timely manner. Insurability, as well as a valid driver's license, were substantive requirements of the claimant's job and without a driver's license or the accompanying insurability, the claimant was unable to perform the essential functions of her job and the employer was not obligated to accommodate her during the time it took for her to remedy the situation. The claimant's actions demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. Consequently, the administrative law judge concludes the employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Benefits are denied.

DECISION:

The October 1, 2004, reference 01, decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

je/kjf