

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JENNIFER S WERGER
Claimant

APPEAL NO. 10A-UI-17554-S2

**ADMINISTRATIVE LAW JUDGE
DECISION**

**DEPARTMENT OF
CORRECTIONAL SERVICES
5TH JUDICIAL DISTRICT**
Employer

**OC: 05/09/10
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Jennifer Werger (claimant) appealed a representative's December 14, 2010 decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits because she was discharged from work with Department of Correctional Services (employer) for violation of a known company rule. After hearing notices were mailed to the parties' last-known addresses of record, a hearing was scheduled for March 10, 2011, in Des Moines, Iowa. The claimant was represented by Zane Blessum, attorney at law, and participated personally. The employer participated by Nancy Robinson, assistant director of field services.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was hired on February 23, 2007, as a full-time Probation Parole Officer 2. The employer did not have a handbook and the claimant did not receive any warnings during her employment. The claimant paid speeding tickets on April 29, 2007, and July 5, 2008, for violations that occurred outside of her work experience

On October 7, 2010, the claimant was arrested for Operating a Vehicle While Under the Influence (OWI). She was not working at the time of the arrest and not in a company vehicle. The employer placed the claimant on administrative leave on October 8, 2010. On October 11, 2010, the employer's insurance company told the employer that it would not insure the claimant under the employer's policy because of too many convictions and the claimant did not have a valid drivers' license. The employer terminated the claimant on October 13, 2010. At the time of termination, the claimant had a valid drivers' license and had no more convictions than the two for speeding.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was not discharged for 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.

The employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The employer did not provide sufficient evidence of job-related misconduct. The employer did not meet its burden of proof to show misconduct. Benefits are allowed.

DECISION:

The representative's December 14, 2010 decision (reference 01) is reversed. The employer has not met its burden of proof to establish job-related misconduct. Benefits are allowed.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/kjw