

**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**

**KURT A GRAY
10197 – 165TH AVE
WEST BURLINGTON IA 52655**

**EIGHTH JUDICIAL DISTRICT
DEPT OF CORRECTIONAL SERVICES
PO BOX 1060
FAIRFIELD IA 52556**

**MICHAEL SCHILLING
ATTORNEY AT LAW
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**Appeal Number: 05A-UI-05800-CT
OC: 05/01/05 R: 04
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:

Kurt Gray filed an appeal from a representative's decision dated May 20, 2005, reference 01, which denied benefits based on his separation from the Eighth Judicial District Department of Correctional Services (DCS). After due notice was issued, a hearing was held by telephone on June 29, 2005. Mr. Gray participated personally and was represented by Michael Schilling, Attorney at Law. The employer participated by Gary Peitz, Residential Manager, and Dan Fell, Residential Supervisor.

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. Gray was employed by DCS from May 29, 1988 until January 31, 2005. He began the employment as a part-time residential officer and went to full-time status three years later. He performed services at a residential facility, or "half-way house," operated by the employer. His job required that he have a valid driver's license because he would have occasion to drive employer-owned vehicles to transport residents or perform errands for the facility.

On December 13, 2004, Mr. Gray was involved in an auto accident while driving a work vehicle. During an investigation of the accident, it was learned that his driver's license had expired in approximately November of 2003. It was also learned during the investigation that Mr. Gray had been cited by West Burlington police approximately six months prior for driving without a valid license. He did not contest the citation and paid the fine. After the accident in December of 2004, Mr. Gray was advised that he would need to have a valid license in order to continue in the employment. On January 11, 2005, he was again advised that he would need to provide proof that he had a valid driver's license in order to resume work.

During the investigation of the December accident, Mr. Gray raised issues concerning his memory. The employer was aware that he was suffering from Post Traumatic Stress Disorder (PTSD) and receiving treatment from a psychiatrist. Because of concerns raised by Mr. Gray regarding his memory, the employer determined that a fitness-for-duty release would be needed from his doctor. Therefore, Mr. Gray was advised on January 11 that the employer would also need a statement from his doctor confirming that he could perform his job. The last release the employer had from his psychiatrist was dated November 22, 2004, prior to the auto accident. At that time, Mr. Gray was released to return to work on November 27, 2004 without restrictions or limitations.

Mr. Gray first began receiving mental health treatment in May of 2002 and was being treated by a psychologist. In 2003, he was diagnosed with PTSD and began seeing a psychiatrist in September of 2003. He was being seen one time per month and continues to be seen by his psychiatrist on a monthly basis. He had suffered from periodic bouts of depression and was allowed time off from work as needed. In June of 2004, Mr. Gray exhausted all time off under the Family and Medical Leave Act. As of July of 2004, he had exhausted all available accrued leave time.

Mr. Gray was given until 1:00 p.m. on January 21, 2005 to present the requested documentation. He contacted the employer on January 21 to advise that he was having trouble getting a driver's license because he did not have a birth certificate with a raised seal. He notified the employer on January 22 that he did not yet have a letter from his psychiatrist. On or about January 24, Mr. Gray was arrested on drug charges. He had been using cocaine since approximately May of 2004. As a result of his drug usage, his wife had him committed to a medical facility as of January 25. He was released on January 31. He was notified in a letter dated January 31, 2005 that his employment was terminated.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Gray was separated from employment for any disqualifying reason. An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section

96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Mr. Gray was discharged because he failed to obtain a valid driver's license and because he failed to present a statement from his doctor concerning his ability to work. An individual's failure to perform a specific task does not constitute misconduct if such failure is in good faith or for good cause. Woods v. Iowa Department of Job Service, 327 N.W.2d 768 (Iowa App. 1982).

Mr. Gray has contended that he had good cause for not complying with the employer's request as his mental condition prevented him from acting in his own best interests. The administrative law judge does not doubt that he has been diagnosed with PTSD. However, the administrative law judge is not persuaded that his condition prevented him from providing the documentation required by the employer. Mr. Gray knew that having a valid license was a condition of his employment. It is understandable that an individual, with or without a mental impairment, might unknowingly allow their license to expire. However, Mr. Gray knew approximately six months before his accident in December of 2004 that his license had expired. He knew when the West Burlington police stopped him that his license had expired. He did not take steps at that time to renew the license. Since he was out driving, the administrative law judge must presume that he was not suffering an episode of depression as those episodes usually kept him confined to home. Rather than having his license renewed at that time, Mr. Gray continued to drive the employer's vehicles without having a valid license to do so. He was clearly put on notice in December and again on January 11 that he needed to take steps to renew his license. However, he did not have the required license by the January 21 deadline. He testified that he went to the Department of Transportation offices in January to get the materials he needed to study to take the driving test and the materials he needed to identify what would be required of him to get his license. He testified that he was too depressed to study the materials to take the test. However, when he spoke to the employer on January 11, he did not indicate that he was suffering from depression and that his condition prevented him from taking steps to get his license. He was sufficiently alert that he contacted the employer on the date the documentation was due, January 21, to indicate that he did not yet have the license because he did not have the required birth certificate. He again failed to put the employer on notice that his failure was due to his medical condition.

Mr. Gray was also on notice on January 11 that the employer needed a statement from his doctor concerning his mental ability to perform his job. He testified that he made one call to his doctor's office to obtain the necessary statement but that the doctor's office did not respond to his call. The administrative law judge is not inclined to believe that a doctor, especially a psychiatrist, would be unresponsive to a patient's call. Mr. Gray did not make any follow-up calls to the doctor's office. At any rate, his call to the doctor's office demonstrated that he had the ability to act on the employer's request. It is true that Mr. Gray was hospitalized in late January. However, his hospitalization was not precipitated by his mental status. His commitment was a direct result of his drug usage and arrest on drug charges.

Mr. Gray did not present any documentation from his treating psychiatrist to confirm that he was mentally unable to act to preserve his employment in January of 2005. He testified that, when he is depressed, he does not care about anything and simply lies around the house. Some of his activities in January of 2005 are inconsistent with his activities when depressed. He went to DOT to get materials about getting his license and contacted his mother to get his birth certificate. He contacted his doctor to obtain a statement regarding his fitness for duty. He contacted his employer on two occasions after January 11 to advise that he did not yet have the requested documentation. If he was so depressed that he did not care about anything, it

seems unlikely that he would have taken steps to meet the employer's request. Moreover, he was not so depressed that he could not go out to obtain recreational drugs.

After considering all of the evidence and the contentions of the parties, the administrative law judge concludes that Mr. Gray was discharged for misconduct. He deliberately failed to obtain the documentation required by the employer in order to continue his employment. His failure to obtain the required license was sufficient, standing alone, to constitute a substantial disregard of the standards the employer had the right to expect. Mr. Gray knew that he had to have a valid driver's license to work for DCS but did not maintain one and did not obtain a new one when directed to do so. Inasmuch as his failure to obtain a new license was not in good faith or for good cause, he was guilty of misconduct within the meaning of the law. Accordingly, benefits are denied.

DECISION:

The representative's decision dated May 20, 2005, reference 01, is hereby affirmed. Mr. Gray was discharged by DCS for misconduct in connection with his employment. 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/pjs