

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

NADINE A DRYER
Claimant

APPEAL NO. 14A-UI-08099-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

MOSAIC
Employer

OC: 07/06/14
Claimant: Appellant (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Nadine Dryer (claimant) appealed a representative's July 28, 2014, decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits after her separation from employment with Mosaic (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for August 27, 2014. The claimant participated personally. The employer was represented by Thomas Kuiper, Hearings Representative, and participated by Shanda Hiatt, Human Resources Manager, and Tami Arnold, Home Community Based Services Program Coordinator. The claimant offered and Exhibit A was received into evidence. The employer offered and Exhibit One was received into evidence.

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 considered all of the evidence in the record, finds that: The claimant was hired on July 24, 2006, as a full-time direct support associate. The claimant signed for receipt of the employer's handbook on November 11, 2012. On April 9, 2007, the claimant signed for receipt of the Procedure for Vehicle Usage. The procedure prohibits the use of cell phones while driving a company vehicle.

On May 15, 2014, the employer issued the claimant a written warning for having an accident with the employer's vehicle, causing over \$1,000.00 of damage to the vehicle. The claimant had a client in the vehicle. The employer notified the claimant that further infractions could result in termination from employment.

On July 3, 2014, the claimant was driving a company vehicle that held another staff member and three clients. While she was driving the claimant talked on a cell phone and may have run through two stop signs. The other staff member reported the claimant's actions to the employer. The claimant admitted to using her cell phone while driving. The employer terminated the claimant on July 7, 2014.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was 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.

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 proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The claimant clearly disregarded the standards of behavior which an employer has a right to expect of its employees. The claimant's actions were volitional. When a claimant intentionally disregards the standards of behavior that the employer has a right to expect of its employees, the claimant's actions are misconduct. The claimant was discharged for misconduct.

DECISION:

The representative's July 28, 2014, decision (reference 01) is affirmed. The claimant is not eligible to receive unemployment insurance benefits because the claimant was discharged from work for misconduct. Benefits are withheld until the claimant has worked in and has been paid

wages for insured work equal to ten times the claimant's weekly benefit amount, provided the claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/css