

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ALLEN HOLLIMAN
Claimant

KUM & GO LC
Employer

APPEAL NO: 13A-UI-02296-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 01/20/13
Claimant: Appellant (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the February 19, 2013, 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 March 25, 2013. The claimant participated in the hearing. Tim Lakers, Director of Maintenance and Tim Richmond, Maintenance Engineer, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a part-time maintenance engineer for Kum & Go from January 23, 2004 to January 18, 2013. The claimant received an OWI January 8, 2013, and notified the employer. On January 18, 2012, the claimant met with Tim Lakers, Director of Maintenance and Tim Richmond, Maintenance Engineer, to discuss the situation. The claimant's job required a valid driver's license in order for him to be able to perform the essential functions of his job as he drove a company vehicle to various car washes attached to the employer's stores and maintained the car washes as well as doing other light general duty maintenance tasks. The claimant offered to have his wife drive him, perform other work for the employer or get a work permit during the time he was without a license but the employer's insurance would not allow it. Consequently, the employer terminated the claimant's employment effective January 18, 2013.

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.

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). While in this case the claimant only had one violation, that OWI violation made it impossible for the employer to insure him, even if he drove his own vehicle with a work permit. Additionally, the employer could not allow the claimant's wife to drive him from job site to job site for liability reasons. Although the claimant was a good employee and it is unfortunate he is in this situation, the administrative law judge must conclude his behavior rises to the level of disqualifying job misconduct as that term is defined by Iowa law. The employer has met its burden of proof. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Therefore, benefits must be denied.

DECISION:

The February 19, 2013, reference 01, decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

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