

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

STEPHANIE TURNER
Claimant

APPEAL NO: 12A-UI-01123-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

ROBERT HALF CORPORATION
Employer

**OC: 07-31-11
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the January 18, 2012, reference 07, 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 14, 2012. The claimant participated in the hearing. Heather Thoren, division director, participated in the hearing on behalf of the employer. Claimant's Exhibit A was admitted into evidence.

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 full-time front desk coordinator for Robert Half Corporation last assigned to Iowa Title Company from October 19, 2011 to December 5, 2011. Iowa Title Company wanted to hire the claimant and, consequently, the employer and Iowa Title Company conducted background checks on the claimant. The claimant answered "no" to the question, "Have you ever been convicted of a felony or misdemeanor?" The claimant had actually been convicted of several misdemeanors involving driving offenses, including driving while her license was revoked, driving while barred, being a habitual violator, and striking an unattended vehicle (Claimant's Exhibit A). The claimant testified she did not answer the application question about her criminal record with a "yes" because they were driving offenses and she was not applying for a driving position. The employer terminated the claimant's employment for falsifying her employment application.

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.

The application question regarding the claimant's criminal background record was clear and did not exclude driving offenses that resulted in criminal charges or state the applicant did not have to respond to that question if she was not applying for a driving position. The claimant had several misdemeanor charges and convictions and should have disclosed those items on her application to both the employer and Iowa Title Company. Her failure to do so constitutes a falsification of her application and was a material fact she failed to state to allow the employer to make a decision on whether to hire her based on her record. Disclosure of her record would not necessarily have disqualified her from being hired for the position, but her failure to be truthful on her application could allow the employer to infer she might be dishonest in her job as well, whether that was true or not, and was a breach of her responsibility to the employer. Consequently, the administrative law judge concludes the claimant's conduct 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. The employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Therefore, benefits must be denied.

DECISION:

The January 18, 2012, reference 07, 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.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/kjw