

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KAREN S ZWIEFEL
Claimant

STATELINE COOPERATIVE
Employer

APPEAL 15A-UI-07937-KC-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 12/28/14
Claimant: Appellant (1)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant filed an appeal from the June 30, 2015, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on July 31, 2015. The claimant participated. The employer participated through Linda Petersen and Corey Shirk, the claimant's direct supervisor, who testified on behalf on the employer.

ISSUE:

Was the claimant discharged for disqualifying, work-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was initially hired as a secretary. She wanted to become a truck-driver. Thereafter, she became employed full time as a truck driver after receiving the requisite truck-driving license. On March 23, 2015, she returned to work after a seasonal absence. Other employees who obtained their Class A CDL licenses were hired by the employer before the claimant obtained a new position as a truck driver with the employer.

She applied for a position with the employer that required a temporary driver's license to drive a tandem truck in the fall. Her ultimate goal was to obtain a Class A license as a semi-truck driver because the employer required drivers to have a Class A license for year-round driving. The claimant obtained a Class A license in the fall of 2014. She interpreted Shirk's communication with her to indicate that he would hire her as a full-time driver once she obtained Class A authority. In the winter of 2014, the claimant underwent truck driving training in Fort Dodge under the recommendation and payment of the employer for an Iowa Class A driver's license. The claimant thought Shirk hired other applicants for the position before he hired her as a driver.

On May 3, 2015, the claimant was charged with operating a motor vehicle while under the influence of alcohol (OWI) in Minnesota. On that date, her driver's license was suspended in Minnesota. On May 4, 2015, the claimant told supervisor Shirk that her driver's license was

suspended in another state. The claimant's job in delivering fertilizer required her to maintain a Class A CDL driver's license in Iowa. The claimant was separated from employment on May 8, 2015, due to her receipt of a driver's license suspension in another state based on driving under the influence of alcohol.

The employer decided that it would not retain her position as a truck driver due in part due to insurance issues if her license was suspended, even in another state. Her position with Stateline Cooperative ended on May 8, 2015, although the claimant was permitted to drive Class A trucks in Iowa until July 25, 2015. On May 10, 2015, the claimant was no longer licensed to drive in Minnesota. The employer's policy entitled "Employee Conduct & Disciplinary Action" 8.1 indicates that working under the influence of alcohol or illegal drugs in a safety sensitive situation may result in disciplinary action up to and including termination of employment. (Exhibit 1)

The claimant argued that she could have been driving trucks for the employer in Iowa for the period of May 8, 2015 through July 25, 2015. She received the driving charge when she was driving out of Armstrong, Iowa in May 2015 under the influence of alcohol.

At the hearing, the employer asked no questions of the claimant. The representative argued that despite the employer's payment for Class A CDL training in 2014, the claimant's termination was necessary.

The claimant offered a copy of newspaper article in support of her claim regarding an individual that was not called as a witness in the unemployment matter and his behavior. The undersigned administrative law judge did not accept the newspaper article into evidence. The claimant decided to address her legal issues in this matter without providing additional objective information.

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 § 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).

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 her own vehicle. *Cook v. Iowa Dep't of Job Serv.*, 299 N.W.2d 698 (Iowa 1980).

During the relevant period, the claimant had her driver's license suspended because of her conduct in operating a motor vehicle while intoxicated in Minnesota. Although insurability was not at issue in this case, a valid driver's license was a substantive requirement of the claimant's job duties as an over-the-road driver. The employer is not obligated to accommodate the claimant during a license suspension period but does have a duty to protect the public safety by keeping impaired or unlicensed drivers off the road. The employer was not required to accommodate the claimant during the license suspension period when she was unable to legally perform the essential functions of her job and the claimant was aware she would not have that job. On July 24, 2015, the claimant was informed that she was not entitled to drive a commercial vehicle in Iowa. Benefits are denied.

DECISION:

The June 30, 2015, (reference 01) unemployment insurance decision is affirmed. The claimant was discharged from employment due to her 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.

Kristin A. Collinson
Administrative Law Judge

Decision Dated and Mailed

kac/css