

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SETH SHIELDS
Claimant

APPEAL NO. 08O-UI-05533-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

NSK CORPORATION
Employer

**OC: 10/07/07 R: 01
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the December 4, 2007, reference 02, decision that denied benefits. After due notice was issued, a telephone conference hearing was held on July 15, 2008. The claimant participated personally. The employer participated through Judy O'Grady, Human Resources Manager, and Roy Calhoun, Business Unit Manager.

ISSUE:

The issue is whether the claimant was discharged for misconduct.

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 9, 2007, as a full-time water pump/grind operator. The claimant signed for receipt of the employer's Drug and Alcohol Policy on July 16, 2007. The claimant passed out, fell and hit his head on October 5, 2007. The claimant was taken to the hospital and a post accident drug screen was administered. The claimant was released to return to work and did so until October 10, 2007. The employer met with the claimant, discussed the employer's policy and the fact that the claimant tested positive for marijuana usage. The claimant apologized, said he was not surprised by the results and implied that he had used marijuana. The employer terminated the claimant.

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.

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 claimant implied to have used the illegal substance for which he later tested positive. The claimant is required to be drug free in his job. His violation of the known work rule constitutes misconduct.

DECISION:

The December 4, 2007, reference 02, representative's decision 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