

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SCOTT SCHMIDT

Claimant

APPEAL NO. 12A-UI-05012-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

GENESIS HEALTH SYSTEM

Employer

OC: 04/08/12

Claimant: Appellant (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Scott Schmidt (claimant) appealed a representative's April 25, 2012 decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits because he was discharged from work with Genesis Health System (employer) for being intoxicated on the job. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for May 22, 2012. The claimant participated personally. The employer participated by Linda Sanders, human resources assistant.

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 having considered all of the evidence in the record, finds that: The claimant was hired on August 30, 1977, as a full-time Environmental Services Aide 2. The claimant signed for receipt of the employer's handbook when he was hired. That handbook contained the employer's drug and alcohol policy. On June 30, 2011, the employer issued the claimant a final written warning when he appeared for work under the influence of alcohol. The employer notified the claimant that further infractions could result in termination from employment. The employer offered the claimant help with treatment, but the claimant declined.

On March 30, 2012, the claimant appeared for work under the influence of alcohol. He drank an 18-pack of beer the night before and stopped drinking at 12:30 a.m. The claimant submitted to a blow meter and urinalysis. He tested at .090 an hour after the start of his shift, 8:00 a.m. The employer terminated the claimant on April 2, 2012.

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 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 was terminated for violating the employer's alcohol policy. The claimant knew that a positive result on an alcohol test would result in termination. The employer is entitled to reasonable-suspicion drug testing and to discharge upon the receipt of a positive result. The claimant admitted to drinking within hours of the testing. The claimant was discharged for misconduct in connection with his work. He is not qualified to receive unemployment insurance benefits.

DECISION:

The representative's April 25, 2012 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/kjw