

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DENNIS L JOHNSON

Claimant

THE UNIVERSITY OF IOWA

Employer

APPEAL NO: 10A-UI-01616-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 01/03/10

Claimant: Appellant (2)

Section 96.5-2-a – Discharge
871 IAC 24.32(1) – Definition of Misconduct

STATEMENT OF THE CASE:

The claimant appealed a department decision dated January 26, 2010, reference 01, that held he was discharged for misconduct on December 29, 2009, and benefits are denied. A telephone hearing was held on March 10, 2010. The claimant participated. Debra Hughes, Benefits Manager, and Lori Lindseth, HR Senior Assistant Director, participated for the employer.

ISSUE:

Whether the claimant was discharged for misconduct in connection with employment.

FINDINGS OF FACT:

The administrative law judge having heard the testimony of the witnesses, and having considered the evidence in the record, finds: The claimant began employment on June 7, 2007, and last worked for the employer as a full-time service tech in the sterilization department on December 29, 2009. The employer discharged the claimant and a co-worker for a physical altercation that occurred at the workplace on December 27.

Employees notified management that claimant and a co-worker had gone to the hospital emergency room as the result of a physical altercation, and the employer interviewed them on December 29th. The claimant had a black eye and one side of his face was swollen, but his co-worker did not have any visible sign of injury. There was an exchange of words that led to the co-worker grabbing claimant's arm, and claimant placing his hand on the co-worker's chest. The co-worker punched the claimant on his face. The claimant retreated from the work area, and went to the ER for treatment.

During claimant's interview, he raised an issue about another co-worker bringing alcohol into the workplace on December 25th. The claimant took a bottle that he thought contained alcohol (Vodka Ice-Tea), and he observed the others doing the same. The employer asked the claimant to produce the bottle, but he failed to do so. After his discharge, the claimant believes the bottle he received did not contain alcohol.

REASONING AND CONCLUSIONS OF LAW:

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 administrative law judge concludes the employer has failed to establish that the claimant was discharged for misconduct in connection with employment on December 29, 2009, for violations of University policy(ies).

The employer failed to produce as evidence any written statements or witnesses to establish that the claimant's behavior in the altercation that occurred on December 27 violated any employer policy. The employer failed to offer its policies that it relied upon for discharge. The evidence is that the claimant was a non-aggressor in an altercation where he was physically assaulted by a co-worker. The physical appearance of the claimant showing visible injury and the co-worker not showing an injury (as observed during the employer interviews), supports the claimant's testimony. The employer also failed to offer statements or testimony from co-workers that claimant was in possession of or consumed an alcoholic beverage on December 25th.

DECISION:

The department decision dated January 26, 2010, reference 01, is reversed. The claimant was not discharged for misconduct on December 29, 2009. Benefits are allowed, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/pjs