

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**RICHARD H FINDLING**  
Claimant

**APPEAL NO. 07A-UI-07228-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**THE AMERICAN BOTTLING COMPANY**  
Employer

**OC: 07/01/07 R: 03  
Claimant: Appellant (1)**

Section 96.5(2)a – Discharge

**STATEMENT OF THE CASE:**

The claimant, Richard Findling, filed an appeal from a decision dated July 24, 2007, reference 01. The decision disqualified him from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on August 13, 2007. The claimant participated on his own behalf. The employer, American Bottling, participated by Regional Human Resources Director Brenda Dixson and Warehouse Manager Tim Couch.

**ISSUE:**

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

**FINDINGS OF FACT:**

Richard Findling was employed by American Bottling from July 25, 2005 until June 29, 2007, as a full-time forklift operator. During the course of his employment he had several accidents while operating the forklift and on June 25, 2007, he had another one. Under company policy he was sent to the Ottumwa Regional Health Center for a post-accident drug screen.

A medical review officer contacted Mr. Findling on June 29, 2007, to discuss a positive test for marijuana. The claimant acknowledged he had smoked marijuana prior to the test. He also acknowledged this to Warehouse Manager Tim Couch when they met later that day. The employer considered the claimant's history of accidents as well as the positive drug test results in making the decision to discharge him and Mr. Couch notified him of the decision on June 29, 2007.

**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 claimant had more than one or two accidents with the forklift while working for American Bottling. The precipitating event was not only another accident but a positive post-accident drug test for a controlled substance. The claimant acknowledged he had consumed marijuana prior to the test. This is a violation not only of company policy but of the duties and responsibilities the employer has the right to expect of an employee. It is conduct not in the best interests of the employer and the claimant is disqualified.

**DECISION:**

The representative's decision of July 24, 2007, reference 01, is affirmed. Richard Findling is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount, provided he is otherwise eligible.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

bgh/css