

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHAEL A JOHNSON
Claimant

APPEAL NO. 07A-UI-04701-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

JOHNSON BROTHERS OF IOWA INC
Employer

**OC: 04/15/07 R: 02
Claimant: Appellant (1)**

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated May 4, 2007, reference 01, that concluded he was discharged for work-connected misconduct. A telephone hearing was held on May 24, 2007. The parties were properly notified about the hearing. The claimant participated in the hearing. Gary Verwers participated in the hearing on behalf of the employer with a witness, Chris Naaf.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked full time as a warehouse worker for the employer from June 12, 2000, to April 13, 2007. The employer is an alcoholic beverages wholesaler. The claimant was informed and understood that under the employer's work rules, theft was a grounds for immediate termination.

On April 13, 2007, Chris Naaf, the facilities manager witnessed the claimant grab two bottles of beer from the line in his work area. He observed the claimant go into the break area and put the two bottles of beer in his lunch cooler. Naaf notified the operations manager, Gary Verwers, about what he had witnessed. They went into the lunch room and found the two bottles of beer in the cooler. They left them there to see if the claimant would try to exit the building with the beer. They later went out to the area where the claimant was working and discovered a case of the same kind of beer that was missing two bottles.

Naaf and Verwers decided they would search the employees' belongings when they left work. The claimant tried exiting the building without being searched but then returned. The beer was discovered in his cooler. The claimant intended to take the beer out of the workplace.

On April 13, 2007, the employer discharged the claimant for theft.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance 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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. The claimant's testimony was not credible. He claimed he had found two bottles of beer in the trash while he was searching the trash for recyclable cans. He provided no rational explanation as to why he would have taken the bottles and put them in his cooler, rather than immediately putting them back into inventory. His testimony that he had gotten distracted and forgot the beer was in his cooler when he left the building is also totally implausible. Finally, he provided no credible explanation for the case of beer with two missing bottles. Naaf testified believably and consistently. He witnessed the claimant taking the bottles from the line, not out of the trash. The preponderance of the evidence establishes the claimant willfully took the beer and intended to take it from the workplace. Work-connected misconduct has been proven in this case.

DECISION:

The unemployment insurance decision dated May 4, 2007, reference 01, is affirmed. The claimant is disqualified from receiving unemployment insurance benefits until he has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs