

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**BRIAN R PETERSEN**  
Claimant

**APPEAL NO. 11A-UI-02963-AT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**POCAHONTAS COUNTY**  
Employer

**OC: 01/16/11  
Claimant: Appellant (5)**

Section 96.5-2-a – Discharge  
871 IAC 24.32(9) – Disciplinary Suspension

**STATEMENT OF THE CASE:**

Brian R. Petersen filed a timely appeal from an unemployment insurance decision dated March 8, 2011, reference 02, that disqualified him for benefits. After due notice was issued, a telephone hearing was held March 30, 2011 with Mr. Petersen participating. County Auditor Margene Bunda participated for the employer, Pocahontas County.

**ISSUE:**

Was the claimant's separation from employment a disqualifying event?

**FINDINGS OF FACT:**

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Brian R. Petersen was employed by Pocahontas County from March 1, 2010 until he was suspended January 10, 2011 and subsequently discharged on March 15, 2011. He last worked as an assistant custodian. On December 26, 2010, Mr. Petersen was involved in an altercation off duty. This led to a police investigation and the discovery of drug paraphernalia at Mr. Petersen's residence. Mr. Petersen was off work due to injury through January 6, 2011. He was placed on indefinite suspension when he returned to work on January 7, 2011. The county auditor and one of the supervisors asked for Mr. Petersen's resignation. He declined to do so. He was discharged March 15, 2011 without returning to work because of the same incident that led to the suspension. The county has a drug free workplace policy that applies to individuals both on and off duty.

**REASONING AND CONCLUSIONS OF LAW:**

The question is whether the evidence establishes that the claimant's separation from employment was a disqualifying event. It does.

Iowa Code § 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 disciplinary suspension is analyzed as if it had been a discharge. See 871 IAC 24.32(9). The evidence in the record persuades the administrative law judge that the claimant's separation from employment came about because of his violation of the county's drug free workplace policy. Benefits are withheld.

**DECISION:**

The unemployment insurance decision dated March 8, 2011, reference 02, is modified. The claimant was suspended on January 10, 2011 and discharged on March 15, 2011 under

circumstances constituting job-related misconduct. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

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Dan Anderson  
Administrative Law Judge

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Decision Dated and Mailed

pjs/pjs