

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**BRETT C LASKO**  
Claimant

**FAREWAY STORES INC**  
Employer

**APPEAL NO. 14A-UI-10787-B2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 09/28/14  
Claimant: Respondent (1)**

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Iowa Code § 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Employer filed an appeal from a decision of a representative dated October 14, 2014, reference 01, which held claimant eligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on November 5, 2014. Claimant participated personally. Employer participated by Maggie Worrall, and Wes Bass. Employer's exhibits One through Four were admitted into evidence.

**ISSUE:**

The issue in this matter is whether claimant was discharged for misconduct.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on September 19, 2014. Employer discharged claimant on September 24, 2014 because employer received a test result of a diluted UA submitted by claimant.

Claimant was involved in an accident driving a forklift on September 19, 2014 at approximately 11:40 a.m. The accident incurred damage to a semi-trailer that was estimated to be in excess of \$1000.00. Fareway Stores, Inc. Employee Drug Testing Policy Guidelines manual states in pertinent part that the company may require an employee to submit to a drug test in conjunction with any workplace accident that results to damage to property reasonably expected to exceed \$1000.00 in damage. Employees do not receive the Drug Testing Policy Guidelines manual.

Claimant was instructed to drop a urine sample for analysis at 1:00 p.m. at a local clinic a few minutes away from work. Claimant clocked out of work shortly before 12:00 p.m. This act of clocking out over an hour before he was supposed to be at the clinic raised the suspicions of a supervisor. Claimant did appear at the clinic in a timely manner after going to the incorrect clinic originally.

Employer provided no documentation as to what happened at the clinic. Claimant's supervisor testified that he went to the clinic and claimant was asked to drop a second UA. He testified

that the first UA was considered untestable. It is unknown if the second UA was tested at the clinic in Boone, or what the testing procedure was on either UA. The second UA was sent to a laboratory in Louisiana, and on September 24, 2014 the second UA came back as being diluted.

As claimant's first UA was considered untestable, claimant was put on suspension until results of the second UA were determined. When the laboratory results came back, claimant was called into work and terminated for insubordination, as employer's Drug Testing Policy Guidelines manual states that engaging in a practice which impairs or obstructs a drug test is insubordination. Claimant states that he was not given a reason for his termination, and further stated that he'd previously tested negative on drug tests. Employer did not follow state mandated procedures for drug testing under Iowa Code §730.5.

#### **REASONING AND CONCLUSIONS OF LAW:**

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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

Iowa Admin. Code r. 871-24.32(4) provides:

(4) Report required. The claimant's statement and the employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of

misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988).

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982), Iowa Code § 96.5-2-a.

In order to establish misconduct as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. Rule 871 IAC 24.32(1)a; *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445 (Iowa 1979); *Henry v. Iowa Department of Job Service*, 391 N.W.2d 731, 735 (Iowa Ct. App. 1986). The conduct must show a 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 the employee's duties and obligations to the employer. Rule 871 IAC 24.32(1)a; *Huntoon* supra; *Henry* supra.

The employer bears the burden of proving that a claimant is disqualified from receiving benefits because of substantial misconduct within the meaning of Iowa Code section 96.5(2). *Myers*, 462 N.W.2d at 737. Because our unemployment compensation law is designed to protect workers from financial hardships when they become unemployed through no fault of their own, we construe the provisions "liberally to carry out its humane and beneficial purpose." *Bridgestone/Firestone, Inc. v. Emp't Appeal Bd.*, 570 N.W.2d 85, 96 (Iowa 1997). "[C]ode provisions which operate to work a forfeiture of benefits are strongly construed in favor of the claimant." *Diggs v. Emp't Appeal Bd.*, 478 N.W.2d 432, 434 (Iowa Ct. App. 1991).

In this matter, the evidence fails to establish that claimant was discharged for an act of misconduct when claimant violated employer's policy concerning insubordination. Employer presented no evidence which connected a UA that is seen as diluted to an insubordinate act. The administrative law judge is not free to make the leaps in logic that employer asks him to make to find claimant insubordinate. Employer is asking the administrative law judge to first find that claimant left work to go and intentionally do something to alter his urine. Employer produced no documentation regarding the UA's that were dropped at the clinic. Employer then asks the administrative law judge to rule that it was appropriate for the test to be sent off to a second lab for confirmation without any input from claimant, and completely ignoring the statutory procedures mandated in Iowa Code 730.5 for positive UA tests. The court cannot make these numerous logical leaps without any proof offered.

The last incident, which brought about the discharge, fails to constitute misconduct because employer has not satisfied its burden of proof in order for the court to find claimant insubordinate. The administrative law judge holds that claimant was not discharged for an act of misconduct and, as such, is not disqualified for the receipt of unemployment insurance benefits.

**DECISION:**

The decision of the representative dated October 14, 2014, reference 01, is affirmed. Claimant is eligible to receive unemployment insurance benefits, provided claimant meets all other eligibility requirements.

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Blair A. Bennett  
Administrative Law Judge

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Decision Dated and Mailed

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