

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOSEPH W BORSOS

Claimant

APPEAL NO. 10A-UI-15252-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

VAN DIEST SUPPLY COMPANY

Employer

OC: 10/03/10

Claimant: Appellant (1)

Iowa Code § 96.5-2-a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's October 27, 2010 determination (reference 03) that disqualified him from receiving benefits and held the employer's account exempt from charge because the claimant had been discharged for disqualifying reasons. The determination for reference 03 is identical to the determination for reference 01. The only difference is the employer's account number. Reference 01 shows the employer's account number as -001 and reference 03 shows it as -000. Since this determination was identical, the decision for this appeal is identical to the decision for appeal 10A-UI-15251-DWT.

The claimant participated in the hearing with his attorney, Shawn Smith. Jeffrey Krausman, attorney at law, represented the employer. Kevin Sharp, Mark Davis, Carolyn Cross, and Lee Trask appeared on the employer's behalf. During the hearing, Employer Exhibits One through Seven were offered and admitted as evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge finds the claimant is not qualified to receive benefits.

ISSUE:

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in October 2005. The claimant worked full-time as a waste management operator. The claimant received a copy of the employer's safety policies or rules. (Employer Exhibit Two.) The policy informs employees that food and beverage cannot be stored or consumed in the warehouse. (Employer Exhibit One.) The employer's safety policy is based on an OSHA requirement.

On July 30, 2010, the claimant received a written warning for using a cell phone on company time. In 2009, the claimant received a verbal warning and a five-day suspension. One warning was for using his cell phone at work and the suspension was for a different policy violation. (Employer Exhibit Four.) As a result, of the earlier warnings, on July 30, the employer gave the claimant a letter informing him that he had to strictly adhere to all company policies and that if he violated another policy or procedure, he would be discharged. (Employer Exhibit Five.) After the claimant received this letter, he understood his job was in jeopardy.

On September 30, the claimant was in the break room taking his break. He noticed he had been in the break room too long. Since he was thirsty, he got a pop and took it out into the warehouse and drank some of it. Sharp saw the claimant drinking the pop. When the claimant saw Sharp, the claimant apologized and indicated he had needed it because he was thirsty after eating some food. The claimant took the pop back to the break room. (Employer Exhibit Six.)

Sharp reported this incident. Trask talked to the claimant that day. The claimant admitted he drank some pop in the warehouse. Trask reminded the claimant that this was a violation of the employer's industrial hygiene policy and that he received a July 30 letter indicating that if had any further violation, he would be discharged. The employer discharged the claimant on September 30 for violating the employer's safety policy earlier that day. (Employer Exhibit Seven.)

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good-faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The claimant understood his job was in jeopardy after he received the July 30, 2010 letter. He knew that if he had one more violation of a policy or procedure, he would be discharged. On September 30, the claimant may have taken the pop out of the break room without thinking because he realized he had exceeded the time allowed for a break, but when he was in the warehouse, he made a conscious decision to open the pop and consume it. This act amounts to an intentional and substantial disregard of the employer's policy. Given the fact the claimant knew and understood his job was in jeopardy for one more infraction, he committed work-connected misconduct on September 30, 2010. As of October 3, 2010, the claimant is not qualified to receive benefits.

DECISION:

The representative's October 27, 2010 determination (reference 03) is affirmed. The employer discharged the claimant for reasons constituting work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of October 3, 2010. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw