

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KIRK A BREDFELDT

Claimant

APPEAL NO. 06A-UI-10064-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MANPOWER INC OF CEDAR RAPIDS

Employer

**OC: 02/26/06 R: 04
Claimant: Appellant (1)**

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Kirk Bredfeldt, filed an appeal from a decision dated October 5, 2006, reference 02. The decision disqualified him from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on October 30, 2006. The claimant participated on his own behalf. The employer, Manpower, participated by Risk Control Manager Debra Chamberlain. Exhibit One was admitted into the record.

ISSUE:

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

FINDINGS OF FACT:

Kirk Bredfeldt was employed by Manpower from April 18, 2005 until September 13, 2006. He was assigned to Winegard during the entire period. At the time of hire the claimant received and signed for copies of the employer's drug and alcohol policies.

On August 29, 2006, the claimant lost consciousness while at work. The on-site supervisor and another manager smelled alcohol on the claimant's cloths and breathe and he was asked to submit to alcohol and drug testing, and he agreed. The tests were given at Corporate Medical Services and Mr. Bredfeldt passed the breathalyzer test. A urine sample was also taken, split, and sent to Norchem Drug Testing Facility. A medical review officer contacted the claimant and informed him he tested positive for cocaine, and asked if he was taking any prescription or over the counter medications. He was not.

The employer was provided with a copy of the drug test results on September 13, 2006. A certified letter was sent to Mr. Bredfeldt that informed him of the results and notifying him he had the right to have the split sample retested at a laboratory of his own choosing and that he must contact his local Manpower office within seven days of the receipt of the letter if he wished to exercise this option. The United States Postal Service notified the claimant he had a certified letter but he never accepted delivery of it, so it was returned to Manpower on October 5, 2006.

Mr. Bredfeldt admitted he had been consuming cocaine a few days prior to losing consciousness at work. He had read the policies but believed he could be fired only if he was actually taking the drugs while at work.

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.

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 employer had probable cause for a drug test when the claimant lost consciousness while at work. The claimant admitted to taking controlled substances prior to coming to work on August 29, 2006. The drug test was given and he was notified of the results by the medical review officer and given the opportunity to explain the positive results. The employer properly notified him of the results and his right to a second test but he declined to take delivery of the certified letter. The employer complied with all the provisions of Iowa Code chapter 730.5, and is not responsible for the claimant's refusal to accept the letter notifying him of his rights. In any event, he has admitted to taking the controlled substances and was under the influence while at work on August 29, 2006. This is a violation of a known company property and is conduct not in the best interests of the employer. The claimant is disqualified.

DECISION:

The representative's decision of October 5, 2006, reference 02, is affirmed. Kirk Bredfeldt is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount, provided he is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/kjw