

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ROBERT D MCCLELLAND**  
Claimant

**APPEAL NO. 17A-UI-07592-S1-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**GENERAL MILLS OPERATIONS LLC**  
Employer

**OC: 07/02/17**  
**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Robert McClelland (claimant) appealed a representative's July 20, 2017, decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits after his separation from employment with General Mills Operations (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for August 14, 2017. The claimant participated personally. The employer notified the appeals bureau prior to the hearing that it would not be participating in the hearing.

**ISSUE:**

The issue is whether the claimant was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on November 1, 2010, as a full-time fruit operator. The claimant signed for receipt of the employer's handbook. The handbook contains the employer's alcohol policy. The policy states that employees cannot work under the influence of alcohol. The employer did not issue the claimant any warnings during his employment.

On June 23, 2017, the claimant went to lunch with a friend two hours prior to the start of his shift. At lunch he consumed two beers. He went to the work site for his 3:00 p.m. shift. Prior to his clocking in, the employer requested he meet with management. The employer asked him if he consumed alcohol before his shift. The claimant said he had and asked why. The employer told him he could not work that day and arranged for him to go home.

The claimant went home and was concerned about the future of his job. On June 23, 2017, he checked into a hospital and committed himself to a treatment program. The employer and claimant remained in contact throughout the week of June 29, 2017. On June 29, 2017, the employer visited the claimant in the hospital and terminated his employment for working under the influence of alcohol.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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).

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984). Prior to the start of the claimant's shift, the claimant admitted to drinking at lunch. The employer chose not to wait until the claimant clocked in and send him for a drug test. The employer sent him home before work started based on an unknown definition of "under the influence". It is unknown whether the claimant met the under the influence standard for operating a vehicle while intoxicated in Iowa at 0.08% or something lower that may or may not have been designated in the employer's alcohol policy. The claimant was terminated for an incident that occurred before the start of his shift. There was no work-related misconduct presented at the hearing. The employer did not participate in the hearing and, therefore, provided no evidence of job-related misconduct. The employer did not meet its

burden of proof to show misconduct. Benefits are allowed, provided the claimant is otherwise eligible.

**DECISION:**

The representative's July 20, 2017, decision (reference 01) is reversed. The employer has not met its burden of proof to establish job related misconduct. Benefits are allowed, provided claimant is otherwise eligible.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

bas/rvs