

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MATTHEW A BORNTRAGER
Claimant

APPEAL NO. 09A-UI-10728-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

THE AMERICAN BOTTLING COMPANY
Employer

**Original Claim: 05/13/09
Claimant: Appellant (1)**

Iowa Code section 96.5(2)(a) – Discharge for Misconduct

STATEMENT OF THE CASE:

Matthew Borntrager filed a timely appeal from the July 14, 2009, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on August 12, 2009. Mr. Borntrager participated. Steve Carter, General Manager, represented the employer.

ISSUE:

Whether the claimant was discharged for misconduct in connection with the employment that disqualifies the claimant for unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Matthew Borntrager was employed by The American Bottling Company as a full-time merchandiser from January 2008 until June 3, 2009, when Supervisor Jeff Genkinger and Steve Carter, General Manager, discharged him from the employment. Mr. Borntrager last performed work for the employer on June 1, 2009. Mr. Borntrager performed his work duties in various grocery stores and discount stores. Mr. Borntrager's job was to make certain that American Bottling products were fully stocked in the customer's coolers and shelves and to clean up after himself.

The final incidents that triggered the discharge occurred on June 1, 2009, when Mr. Borntrager failed to perform essential duties at four different locations. One customer complained that day that Mr. Borntrager had failed to fill a display with product after the manager specifically requested that he fill the display. The employer had Mr. Borntrager return to one customer to perform the tasks he had left undone earlier in the day. The employer directed Mr. Borntrager to report back to another customer's store, but Mr. Borntrager went home instead. Mr. Borntrager did not respond to multiple calls to his employer-issued cell phone and personal cell phone.

The events of June 1, 2009 followed multiple prior, similar incidents and multiple requests from customers that Mr. Borntrager not be sent back to the customer's store. In response to such issues and complaints, the employer had put Mr. Borntrager on a last-chance agreement in February.

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.

The employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

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. See 871 IAC 24.32(4). When it is in a party's power to produce more direct and satisfactory evidence than is actually produced, it may fairly be inferred that the more direct evidence will expose deficiencies in that party's case. See Crosser v. Iowa Dept. of Public Safety, 240 N.W.2d 682 (Iowa 1976).

The weight of evidence establishes that Mr. Borntrager was careless and negligent in the performance of his essential work duties. The evidence indicates four such incidents on June 1 and a pattern of similar conduct leading up to the final incidents. The weight of the evidence indicates carelessness and/or negligence sufficiently recurrent to indicate a willful disregard for

the employer's interests and violation of standards the employer reasonably expected of Mr. Borntreger.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Borntreger was discharged for misconduct. Accordingly, Mr. Borntreger is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The employer's account shall not be charged for benefits paid to Mr. Borntreger.

DECISION:

The Agency representative's July 14, 2009, reference 01, decision is affirmed. The claimant was discharged for misconduct. The claimant is disqualified for unemployment benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit allowance, provided he meets all other eligibility requirements. The employer's account will not be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

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