

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**STEVEN G OLSON**  
Claimant

**APPEAL NO. 13A-UI-06035-VST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HY-VEE INC**  
Employer

**OC: 04/21/13**  
**Claimant: Appellant (1)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

The claimant filed an appeal from a representative's decision dated May 7, 2013, reference 01, which held that the claimant was ineligible for unemployment insurance benefits. After due notice, a hearing was held on September 10, 2013, by telephone conference call. The claimant participated personally. The employer participated by Jeffrey C. McDaniel, attorney at law. The employer participated by Andy Streit, store director; Jim Blizzard, store director—Cedar Rapids; and Todd Gellerstedt, meat clerk. Julia Church served as hearing representative for the employer.

**ISSUE:**

Whether the claimant was discharged for misconduct.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact: The employer is a grocery retailer and drug store. The store where the claimant worked is located in Davenport, Iowa. The claimant was hired on July 25, 2001, as a full-time meat clerk. His last day of work was April 22, 2013. He was terminated on April 22, 2013.

The series of events that led to the claimant's termination began on April 18, 2013. The claimant was working in the meat department with another employee named Todd Gellerstedt. While they were working, the claimant struck Mr. Gellerstedt in the throat with his forearm. The claimant denied that he had done this. Mr. Gellerstedt did not report the incident at the time. Later that night, he went to the emergency room because his throat hurt. There was a contusion on his throat. He reported it to the employer the next day and both he and the claimant were asked to take a drug test.

Jim Blizzard, who was manager of store operations, asked the claimant and Mr. Gellerstedt to take a drug test. The claimant refused. He told Mr. Blizzard that he was refusing the drug test and he knew that he was "done." He sent a text message to another employee telling him that he was no longer working there.

The claimant came to the store for a meeting with the store director, Andy Streit. Mr. Streit asked the claimant if he had refused the drug test and he said that he had. The employer has the following policy:

Hy-Vee will require employees to submit to drug testing in conjunction with the investigation of any accidents in the workplace, within 32 hours of the injury, for the following reasons:

Where the accident results in: an injury that requires medical treatment, loss of consciousness, restriction of work or motion or transfer to another job.

(Exhibit 3)

The claimant was aware of this policy.

### **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.

Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. Insubordination, which is the continued failure to follow reasonable instructions, constitutes misconduct. See Gilliam v. Atlantic Bottling Company, 453 N.W.2d 230 (Iowa App. 1990) The employer has the burden of proof to show misconduct.

The claimant is not eligible for unemployment insurance benefits. The administrative law judge understands that the claimant says that he did not strike Mr. Gellerstedt. Mr. Gellerstedt is credible when he claims that the claimant did not hit him. The fact that he had a contusion on his throat, which was confirmed by an emergency room doctor, certainly adds credence to his testimony. But the reason the claimant was terminated was his inexplicable failure to take a drug test. The claimant's testimony that he was not aware that refusing to take a drug test would lead to termination is not credible. He told Mr. Blizzard and at least one other employee that he knew he was done by failing to take the test. The employer has a reasonable requirement that a drug test be taken in conjunction with a personal injury. The claimant offered no good reason for failing to take the test. This is insubordination, which is misconduct. Benefits are denied.

**DECISION:**

The decision of the representative dated May 7, 2013, reference 01, is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

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Vicki L. Seeck  
Administrative Law Judge

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Decision Dated and Mailed

vls/pjs