

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DAMON A STOWELL
Claimant

APPEAL NO. 11A-UI-04519-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

ARCHER-DANIELS-MIDLAND CO
Employer

**OC: 02/27/11
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Employer filed an appeal from a decision of a representative dated March 29, 2011, reference 01, which held claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on May 2, 2011. Claimant participated. Employer participated by Kate O'Connell, human resources generalist, and Jason Haybrock, assistant plant superintendent. The record consists of the testimony of Kate O'Connell; the testimony of Jason Haybrock; the testimony of Damon Stowell; and Employer's Exhibits One.

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 corn processing facility in Cedar Rapids, Iowa. The claimant was hired on April 12, 2010. His last day of work was March 1, 2011. At that time he was a utility worker. He was terminated on March 2, 2011, for failing to comply with a continued employment agreement. (Exhibit 1)

The events that led to the claimant's termination go back to September 20, 2010. The claimant reported for work on third shift. His actions on that night gave rise to reasonable suspicion that he was acting under the influence. The employer took the claimant to a medical facility for testing and he tested positive for marijuana. The employer has a policy of assisting individuals like the claimant to keep their jobs and get necessary treatment. The claimant was referred for treatment through the employer's Employee Assistance Program (EAP).

The claimant signed a continued employment agreement which provided, in part, that he would agree to cooperate fully with EAP recommendations, appear as scheduled for all appointments, avoid absences, and remain in treatment until discharged. The agreement also stated: "I

understand that missing appointments, no cooperating with the treatment plan in any way, or being discharged from the treatment program for any reason other than successful rehabilitation will automatically convert the present leave of absence to a termination for cause.” (Exhibit 1)

The claimant cooperated with the treatment plan and attended his weekly sessions. The employer monitored the claimant’s attendance on a weekly basis. The claimant had a conversation with his counselor at the treatment program and it was agreed that he was finished with the formal program and that he would begin attending a meeting on Tuesday for individuals who had graduated from the program. This decision did not get transmitted to the third party EAP and as a result, the employer believed that the claimant had missed a meeting. The EAP also tried to get in touch with the claimant. The claimant admitted he did not usually answer his phone because he was having problems with creditors and screening his calls. Based on the claimant’s failure to attend a treatment session and his failure to return calls to the EAP, the employer terminated the claimant.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 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 leads to termination is not necessarily misconduct that disqualifies an individual from receiving unemployment insurance benefits. Misconduct occurs when there are deliberate acts or omissions that constitute a material breach of the worker’s duty to the employer. The

legal definition of misconduct excludes errors of judgment or discretion in isolated situations. The employer has the burden of proof to show misconduct.

The claimant's termination in this case resulted from several related acts of miscommunication between the parties. In order to understand how this all happened, the participants need to be identified. The employer has an EAP, which in turn arranged for drug and alcohol treatment with the claimant with Sedlacek, a treatment facility. The employer monitored the claimant's progress through the EAP, and not directly with Sedlacek. The claimant attended treatment faithfully for what he said was eight months, although that length of time does not appear to be accurate since the positive test took place in late September 2010. The employer agreed that the claimant cooperated in his treatment program.

The claimant thought that he had been graduated from the program given the length of time he had participated and what his counselor at Sedlacek had told him. The claimant did not attend the normal meeting but rather planned to attend a meeting he said was on Tuesday that was free and designed for graduates. The EAP reported that the claimant missed the meeting. Somewhere someone was confused: it could have been the claimant, who was mistaken about his status; the treatment center that failed to notify the EAP; or the EAP that had inaccurate information.

The administrative law judge has concluded that the claimant did not deliberately choose to miss a meeting and thereby jeopardize his employment. There was rather confusion about what meeting he should attend and why. The claimant further complicated his situation by not returning calls from the EAP and not explaining things adequately to his employment on March 2, 2011. When the totality of circumstances is considered, however, the claimant's actions are more in the nature of poor judgment than a deliberate breach of his duty to the employer. Benefits are therefore allowed if the claimant is otherwise eligible.

DECISION:

The decision of the representative dated March 29, 2011, reference 01, is affirmed. Unemployment insurance benefits are allowed, provided claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/pjs