

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RONALD ALLEN
Claimant

APPEAL NO: 10A-UI-10854-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

MANPOWER TEMPORARY SERVICES
Employer

**OC: 12/20/09
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge
871 IAC 24.32(1) – Definition of Misconduct
Section 730.5 – Drug & Alcohol Testing

STATEMENT OF THE CASE:

The claimant appealed a department decision dated July 26, 2010, reference 10, that held he was discharged for misconduct on June 10, 2010, and benefits are denied. A telephone hearing was held on September 23, 2010. The claimant participated. Gail Gonyaw, Staffing Specialist, participated for the employer.

ISSUE:

Whether the claimant was discharged for misconduct in connection with employment.

FINDINGS OF FACT:

The administrative law judge having heard the testimony of the witnesses, and having considered the evidence in the record, finds: The claimant began employment on assignment at Winegard as a full-time forklift driver on May 12, 2010. The claimant received an employee handbook that contained the policies of the employer that included the Drug/Alcohol testing provision. The policy provides that any employee who tests greater than .04 percentage of alcohol may be terminated.

On June 11, the employer received a report from a Winegard representative that the claimant had been involved in a minor incident involving the operation of his forklift and alcohol could be detected on his breath. The employer reported to the job site. Employer representatives learned the claimant had operated his forklift in an erratic manner that caused a minor accident. The representatives could smell alcohol on claimant's breath. When questioned whether he had recently, the claimant stated he had the night before reporting for his 6:00 a.m. shift.

The employer believed it had reasonable suspicion to request claimant submit to a breath test according to its policy. The claimant consented. At the Great River health facility, the claimant submitted to a breath test that recorded .05, and after waiting fifteen minutes, re-tested at .047. In accordance with employer policy, he was terminated for exceeding .04.

The employer sent claimant a certified letter on June 11 in furtherance of the termination with the opportunity to respond and request rehabilitation. The claimant signed for the letter and the employer received the receipt. The claimant failed to respond to the letter/rehabilitation option.

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 administrative law judge concludes the employer has established that the claimant was discharged for misconduct in connection with employment on June 11, 2010, for violation of the employer drug/alcohol policy.

The employer followed the requirements of its drug/alcohol testing policy and the requisites of the Iowa law in having reasonable suspicion the claimant was under the influence of alcohol. The claimant consented to breath-testing, and the results show his blood alcohol exceeded the threshold (greater than .04) for termination. The claimant was given an opportunity for rehabilitation, but he declined by failing to respond to it.

DECISION:

The department decision dated July 26, 2010, reference 10, is affirmed. The claimant was discharged for misconduct on June 11, 2010. Benefits are denied until the claimant requalifies

by working in and being paid wages for insured work equal to ten times his weekly benefit amount, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/css