

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DAVID L STEVENS

Claimant

APPEAL NO. 10A-UI-16646-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

GREEN PLAINS RENEWABLE ENERGY INC

GREEN PLAINS SHENANDOAH LLC

Employer

OC: 10/31/10

Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the November 22, 2010 (reference 01) decision that denied benefits. After due notice was issued, a telephone conference hearing was held on January 18, 2011. Claimant participated. Employer did not respond to the hearing notice instructions and did not participate.

ISSUE:

The issue is whether claimant was discharged for reasons related to job misconduct sufficient to warrant a denial of benefits.

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant most recently worked full-time as a maintenance technician and was separated from employment on November 1, 2010. Claimant and a coworker traveled to Tennessee for a plant shutdown and they charged four and five beers respectively to the employer's credit card. The coworker was given a verbal warning and claimant was discharged. He had been told not to buy alcohol separate from a meal but had not been instructed not to purchase alcohol with a meal. He had purchased alcohol with meals while traveling for work in June and October 2010 without employer comment. He believes the discharge was retaliatory since he had raised an issue in mid-October 2010 just before the trip to Tennessee about plant management's money handling; dividing excess maintenance department funds amongst themselves instead of distributing the funds to the maintenance departments for work tool purchases as other locations' management had.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason.

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.

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). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. IDJS*, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988). 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).

In an at-will employment environment an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, employer incurs potential liability for unemployment insurance benefits related to that separation. Even though the claimant admits he purchased alcohol with a meal on the employer's credit card, he had only been warned not to purchase alcohol apart from a meal and the other employee only received a verbal warning about the same conduct. Since the consequence was more severe than another employee received for the same offense, the disparate application of the policy cannot support a disqualification from benefits. Furthermore, the evidence convinces the

administrative law judge that he was discharged in retaliation for complaining that management split excess funds rather than distributing them for tool purchases. Benefits are allowed.

DECISION:

The November 22, 2010 (reference 01) decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided claimant is otherwise eligible. The benefits withheld shall be paid, provided the claimant is otherwise eligible.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/pjs