

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Bell was employed by Tyson from May 3 until September 24, 2005 as a full-time production worker. He was discharged for violation of the employer's alcohol policy. On September 2, a coworker reported that Mr. Bell smelled of alcohol. The employer met with him and noted that he smelled of alcohol and that his eyes were bloodshot. The employer had a reasonable suspicion that he was at work under the influence of alcohol and, therefore, conducted alcohol testing. Mr. Bell's alcohol level at that time was in excess of the .04 limit stated in the employer's policy. He opted to go through self-rehabilitation rather than a treatment facility. He was advised that he would be subject to random testing in the future and would be discharged if he again violated the alcohol policy. Mr. Bell attributed his alcohol level to the fact that he had been consuming large amounts of Nyquil for allergies.

On September 7, Mr. Bell underwent follow-up testing for alcohol and passed. He was again tested on September 22. On that occasion, his alcohol level was .109 and .103. Because his alcohol level exceeded the employer's standards, Mr. Bell was discharged on September 24, 2005.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Bell was separated from employment for any disqualifying reason. An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Mr. Bell knew from the testing done on September 2 that he would be discharged if he again violated the employer's policy regarding alcohol. In spite of this, he again reported to work on September 22 under the influence of alcohol.

The administrative law judge is not inclined to believe that taking prescribed doses of Nyquil would account for the level of alcohol in Mr. Bell's system. Even if it did, this was a factor that would have been known to him on September 2. He failed the employer's alcohol test on September 2, a date on which he stated he had been using Nyquil extensively. Therefore, he knew that consuming large quantities of Nyquil, if that was the case, might cause him to fail the alcohol test on later dates. His continued use of a medication that he knew would violate the employer's alcohol policy constituted an intentional disregard of the employer's interests and standards. It is noteworthy that Mr. Bell passed the alcohol test on September 7 in spite of the fact that, according to him, he had continued to use Nyquil. The administrative law judge is not inclined to believe that consumption of Nyquil was the only remedy for whatever allergy problems Mr. Bell may have been experiencing.

Mr. Bell was on notice that being at work under the influence of alcohol was contrary to the employer's policy and might result in his discharge. He worked in a meat packing plant where there are sharp implements and moving machinery. An individual who is at work in such an environment while under the influence of alcohol, from whatever source, presents a danger to himself and to others. Inasmuch as Mr. Bell engaged in conduct that was contrary to the employer's interests and standards, it is concluded that disqualifying misconduct has been established. Accordingly, benefits are denied.

DECISION:

The representative's decision dated October 13, 2005, reference 01, is hereby affirmed. Mr. Bell was discharged by Tyson for misconduct in connection with his employment. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he satisfies all other conditions of eligibility.

cfc/pjs