

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

WILLIAM A COLEMAN
Claimant

APPEAL NO. 08A-UI-05921-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

EAST WEST STAFFING
Employer

**OC: 05/11/08 R: 04
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the June 20, 2008, reference 02, decision that denied benefits. After due notice was issued, a telephone conference hearing was held on July 15, 2008. The claimant participated personally. The employer participated through Michelle Mutchler, On-Site Manager. The claimant offered and Exhibit One was received into evidence.

ISSUE:

The issue is whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on January 3, 2008, as a full-time forklift operator. The claimant signed for receipt of the employer's Drug and Alcohol Policy on January 4 and April 15, 2008. The claimant had a forklift accident at work on April 15, 2008. The on-site manager transported the claimant to the laboratory. While driving out of the parking lot the on-site manager hit a parked car. The on-site manager notified the employer and the worker and agreed to return to the parking lot as soon as the claimant was tested.

At the testing facility the claimant provided a sample that was below normal body temperature. The claimant was informed that he should drink water and be retested as soon as he could provide a sample. The nurse telephoned security because she felt the claimant was agitated and rude to others. The claimant refused to stay and provide another sample. The claimant said his neck hurt from the accident and he wanted to return to the work parking lot. The on-site manager offered medical treatment the claimant refused.

The two returned to the parking lot. The on-site manager offered medical treatment again but the claimant refused. The police arrived and a report was given. The on-site manager offered to return the claimant to the drug testing facility but the claimant declined even though he was informed that he would be terminated for failure to submit to testing.

The on-site manager was taken to a facility for drug and alcohol testing shortly thereafter. The claimant sought medical treatment at the emergency room. He was released from work by his physician on April 21, 2008.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was discharged for misconduct.

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 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 claimant was terminated for violating the employer's drug policy. The claimant should have known that refusal of a drug test would result in termination. The employer is entitled to perform drug testing after an accident and to discharge if the employee refuses testing. The claimant was discharged for misconduct in connection with his work. He is not qualified to receive unemployment insurance benefits.

DECISION:

The June 20, 2008, reference 02, representative's decision is affirmed. The claimant is not eligible to receive unemployment insurance benefits, because the claimant was discharged from work for misconduct. Benefits are withheld until the claimant has worked in and has been paid

wages for insured work equal to ten times the claimant's weekly benefit amount, provided the claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/css