

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRUCE A BOALS

Claimant

APPEAL NO. 14A-UI-02289-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

SDH SERVICES WEST LLC

Employer

OC: 01/19/14

Claimant: Respondent (2)

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

STATEMENT OF THE CASE:

The employer filed an appeal from the February 19, 2014, (reference 03) unemployment insurance decision that allowed benefits. After due notice was issued, a hearing was held on March 24, 2014. Claimant did not participate. Employer did participate through Gary Vance, General Manager and Tina Kilburg, Environmental Services Manager. Employer's Exhibit One was entered and received into the record.

ISSUE:

Was the claimant discharged due to job-connected misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as an electrician beginning on December 3, 2012 through August 29, 2013 when he was discharged. When hired the claimant was given a copy of the employer's drug and alcohol policy. The policy put him on notice that being under the influence of alcohol while at work could lead to his discharge. The claimant missed work due dental surgery on August 5. He was to work on August 6 and spoke to his supervisor who at the time was Rick Green. The claimant was to begin work on August 6 at 11:00 p.m. He arrived early and sat in Ms. Kilburg's office talking with her. Ms. Kilburg smelled alcohol on the claimant and noticed that his eyes were bloodshot. When Ms. Kilburg questioned the claimant he indicated that he had been drinking alcohol prior to work but believed that he had stopped drinking at least four hours prior to reporting to work. Ms. Kilburg believed the claimant was not in any condition to work so she sent him home for the evening. Ms. Kilburg believed that the two weeks prior to this incident the claimant had been drinking alcohol heavily due in part to problems in his personal life. The claimant was to work on August 7 but did not report to work because he was drinking alcohol and could not stop. Mr. Green told him to seek out rehabilitation through Mecca. The claimant told Mr. Green he had already contacted a counselor and that he was asking the employer for a 45 day leave of absence so he could go through alcohol rehabilitation. On August 8 Mr. Green personally gave the claimant the paperwork he needed to complete to obtain a leave of absence. The claimant was specifically told he needed to submit the leave of absence paperwork to the office by August 22, 2013. On August 20, 2013 the claimant turned

in a doctor's note indicating he was capable of returning to work. The claimant was specifically told he still needed to complete the leave of absence paperwork and turn it into the office by August 22, 2013. The claimant never completed or turned in the leave of absence request paperwork.

By August 29 the employer determined that because the claimant had not turned in his leave of absence request paper work and because he had reported for work under the influence of alcohol on August 6 he was discharged effective August 29, 2013.

While the fact-finding representative's decision allowed benefits, the claimant has not claimed or received any unemployment insurance benefits since filing a claim with an effective date of January 19, 2014.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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.

Where an employee commits acts that impair the employee's ability to function on the job this can be misconduct even if the acts do not occur at work or during work hours. See *Cook v. IDJS*, 299 N.W.2d 698, 702 (Iowa 1980) ("While he received most of his driving citations during

non-work hours and in his personal car, they all bore directly on his ability to work for Hawkeye.”). Conduct that is contrary to established policies of the employer may be disqualifying even if the conduct is away from work. *Kleidosty v. Employment Appeal Board*, 482 N.W.2d 416 (Iowa 1992)(drug offense). Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990).

The administrative law judge is persuaded that the claimant reported for work on August 6 under the influence of alcohol in contravention of the employer’s written policy, a copy of which had been given to him. The claimant was sent home and then was given until August 22 to submit leave paperwork so he could seek assistance for alcohol rehabilitation. The claimant did not complete the required paperwork. Based upon the claimant’s failure to complete the required leave paperwork and his clear violation of the drug and alcohol policy the claimant was discharged. The claimant’s failure to submit paperwork to entitle him to a leave without pay, coupled with his violation of the prohibition against reporting to work under the influence of alcohol is disqualifying job-related misconduct. Benefits are denied.

As the claimant has neither claimed nor received any unemployment insurance benefits, the issue of overpayment is moot.

DECISION:

The February 19, 2014, (reference 03) decision is reversed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/css