

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CANDICE M LYNCH
Claimant

APPEAL NO: 17A-UI-13061-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

TPI IOWA LLC
Employer

OC: 12/03/17
Claimant: Appellant (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the December 18, 2017, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on January 10, 2018. The claimant participated in the hearing. Danielle Williams, Senior Human Resources Coordinator participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time production worker for TPI Iowa, LLC from July 25, 2016 to December 4, 2017. She was discharged for failing to comply with a reasonable suspicion alcohol test.

On November 22, 2017, the claimant's manager noticed the odor of alcohol on the claimant and that she was unusually loud. Her suspicions were verified by the claimant's supervisor. Both the manager and supervisor attend the annual training provided to make observations and decisions regarding reasonable suspicion testing. The employer asked the claimant to submit to alcohol testing and she agreed and was accompanied by the employer to Kinetic Edge in Newton. Kinetic Edge conducts the employer's drug and alcohol testing. The nurse made several attempts to administer the breathalyzer test to the claimant but she did not blow hard enough for the machine to get a sample successfully. The employer's witness testified that in her five years with the employer she had never observed a test subject fail to blow hard enough to obtain a test sample. After trying the breathalyzer numerous times, the nurse tried to switch to a saliva test but the claimant would not produce enough saliva to perform the test. When the saliva test was also unsuccessful, the nurse tried the breathalyzer one more time but the claimant still failed to blow hard enough to provide a sample for testing. The nurse determined the claimant was intentionally failing to follow her directions and that is why the tests were unsuccessful. The nurse deemed the claimant non-compliant. The claimant was sent home

while the employer conducted a review of the situation. Some of the parties involved in the decision of whether the claimant's employment would be terminated were on vacation due to the Thanksgiving holiday. Consequently, the employer notified the claimant December 4, 2017, that her employment was terminated due to the alcohol test.

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 section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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.

Iowa Admin. Code r. 871-24.32(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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proving disqualifying misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged him for reasons constituting work-connected misconduct. Iowa Code section 96.5-2-a. Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duties and obligations to the employer. See 871 IAC 24.32(1).

The claimant failed to provide a breath sample for the breathalyzer machine or a saliva sample to be tested to determine if she was under the influence of alcohol while at work. She was given multiple opportunities to comply but despite those chances, she refused to blow hard enough into the breathalyzer or produce enough saliva for an alternative test. It is not reasonable to believe the claimant could not meet the requirements of these two very simple tests. The result of failing to comply with those two tests is that the claimant's actions are treated as a refusal to submit to testing which is considered the same as a positive test.

Under these circumstances, the administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). Therefore, benefits are denied.

DECISION:

The December 18, 2017, reference 01, decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/scn