

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JEFFREY J EWALT**  
Claimant

**BERTCH CABINET MFG INC**  
Employer

**APPEAL NO: 13A-UI-10701-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 12/23/12**  
**Claimant: Appellant (1)**

Section 96.5-2-a – Discharge  
871 IAC 24.32(1) – Definition of Misconduct

**STATEMENT OF THE CASE:**

The claimant appealed a department decision dated September 12, 2013, reference 01, that held he was discharged for misconduct on August 22, 2013, and benefits are denied. A telephone hearing was held on October 14, 2013. The claimant did not participate. Mitzi Tann, HR Director, and Rob Meyerhofs, Shift Leader, participated for the employer. Employer Exhibit One was received as evidence.

**ISSUE:**

Whether claimant was discharged for misconduct in connection with employment.

**FINDINGS OF FACT:**

The administrative law judge having heard the witness testimony and having considered the evidence in the record finds: The claimant was hired on July 9, 2004, and last worked for the employer as a full-time assembly/shipping apprentice on August 22, 2013. The employer has a policy against illegal drug use and possession at the work place.

The employer learned claimant conned some ten pain/muscle relaxant pills from a co-worker on August 21. Claimant has a long history of drug dependency issues known to the employer. Although the employer worked with claimant about dealing with issues, he had been warned that possession and/or use of illegal drugs could lead to employment termination.

When claimant admitted getting the pills from his co-worker he was terminated for violation of the employer drug policy. Claimant failed to respond to the hearing notice and the department record (APLT) shows he did not call in for the hearing.

**REASONING AND CONCLUSIONS OF LAW:**

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 administrative law judge concludes employer established claimant was discharged for misconduct on August 22, 2013 for violation of its drug policy.

While the employer had worked with claimant about his known drug dependency issues, it set a standard that he was not to use or possess drugs at the workplace. His act of conning a co-worker at the workplace out of some pain pills violated the employer policy and constitutes job disqualifying misconduct.

**DECISION:**

The department decision dated September 12, 2013, reference 01, is affirmed. The claimant was discharged for misconduct on August 23, 2013. Benefits are denied until the claimant requalifies by working in and being paid wages for insured work equal to ten times his weekly benefit amount, provided the claimant is otherwise eligible.

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Randy L. Stephenson  
Administrative Law Judge

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Decision Dated and Mailed

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