

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DONALD C BARRETT
Claimant

APPEAL NO. 07A-UI-07132-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**COMMUNITY SCHOOL DISTRICT OF
SOUTH TAMA COUNTY**
Employer

**OC: 06/24/07 R: 02
Claimant: Respondent (1)**

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Community School District of South Tama County filed an appeal from a representative's decision dated July 16, 2007, reference 01, which held that no disqualification would be imposed regarding Donald Barrett's separation from employment. After due notice was issued, a hearing was held by telephone on August 7, 2007. Mr. Barrett participated personally. The employer participated by Greg Darling, Assistant Superintendent/Director of Human Resources.

ISSUE:

At issue in this matter is whether Mr. Barrett was separated from employment for any disqualifying reason.

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. Barrett was employed by the school district from February 5 through June 8, 2007 as a substitute custodian. He was provided assistance by Goodwill Industries in obtaining and maintaining the employment. On or about May 23, two custodians reported that Mr. Barrett was at work with the smell of alcohol on his breath. Because of his past history with drugs and alcohol, the employer advised him at the time of hire that it reserved the right to conduct random drug and alcohol testing. No drug or alcohol testing was done as a result of the May 23 complaint.

On June 7, the employer again received a complaint that Mr. Barrett smelled of alcohol. No testing was done at that time or on June 8, his last day at work. The complaint did prompt the employer's decision to meet with him to discuss the matter. Telephone calls to him were unsuccessful. His counselor at Goodwill Industries was informed of the need to meet with Mr. Barrett but he was never told he needed to meet with the employer. Mr. Barrett was only told by his counselor that he had been discharged. He never reported to work under the influence of alcohol or other drugs.

The employer also had problems with the fact that Mr. Barrett would sometimes leave work early. The employer did not have a record of when such incidents occurred. There were also

problems with his job performance. His supervisor pointed out deficiencies in his work but never advised him that his continued employment was in jeopardy for any reason.

REASONING AND CONCLUSIONS OF LAW:

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). It appears that the primary reason for Mr. Barrett's discharge were the complaints that he reported to work smelling of alcohol. The employer did not present testimony or written statements from any individual who smelled alcohol on Mr. Barrett. The first complaint was made on May 23 but Mr. Barrett was still allowed to work on June 7 and June 8. If there was a belief that he was at work under the influence of alcohol or drugs, the employer could have availed itself of drug and/or alcohol testing as permitted by law. The employer has failed to establish that Mr. Barrett was, in fact, at work either smelling of or under the influence of alcohol or other drugs.

To the extent that Mr. Barrett's discharge may have been prompted by his failure to attend a meeting with the employer to discuss the alcohol allegations, the evidence failed to establish that he had notice a meeting was required for his continued employment. The individual who left messages for him on and after June 9 did not participate in the hearing to give testimony concerning the content of any messages left for Mr. Barrett. Mr. Barrett denied receiving any messages from his supervisor about the need for a meeting. The employer did not present evidence from anyone at Goodwill Industries who may have advised Mr. Barrett of the need for a meeting.

The administrative law judge has also considered the allegations regarding Mr. Barrett leaving work early and his job performance. The employer failed to provide evidence as to when he left work early. Therefore, the administrative law judge cannot determine if there was a current incident of such conduct that would support a disqualification from benefits. Although Mr. Barrett was coached on how to perform his job to the employer's satisfaction, he was never told his performance was such that his continued employment with the school district was in jeopardy.

After considering all of the evidence, the administrative law judge concludes that the employer has failed to satisfy its burden of proving disqualifying misconduct. While the employer may have had good cause to discharge, conduct that might warrant a discharge from employment will not necessarily support a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa 1983). For the reasons stated herein, benefits are allowed.

DECISION:

The representative's decision dated July 16, 2007, reference 01, is hereby affirmed. Mr. Barrett was discharged by the school district but misconduct has not been established. Benefits are allowed, provided he satisfies all other conditions of eligibility.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/css