

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SANTINO MADUT
Claimant

APPEAL NO: 17A-UI-06884-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

SMITHFIELD FARMLAND CORP
Employer

OC: 06/04/17
Claimant: Appellant (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the June 30, 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 July 25, 2017. The claimant participated in the hearing. Becky Jacobson, Human Resources Manager and Sue Freese, Assistant Human Resources Manager, participated in the hearing on behalf of the employer. Employer's Exhibits One through Five were admitted into evidence.

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 Smithfield Farmland Corporation from May 1, 2012 to May 16, 2017. He was discharged for a second violation of the employer's alcohol policy.

The claimant's last day worked was April 29, 2017. On May 8, 2017, the claimant presented at the employer's human resources department and provided a medical release stating he could return to work without restriction May 6, 2017, although he did not report for work May 6 or 7, 2017. Consequently, the employer believed the claimant was reporting for work as he arrived around 3:00 p.m. and he starts work at 3:00, 4:00 or 5:00 p.m. During the employer's conversation with the claimant, the employer noticed the odor of alcohol emanating from the claimant, his speech was slurred, his eyes were bloodshot and he was repeating himself. The employer notified the claimant he needed to accompany her to the nurse's office. The claimant did so where a breathalyzer test was administered. The employer then drove the claimant to Dr. Don Anderson's office where he tested at .108. While at Dr. Anderson's office the claimant called the employer and reported he was ill. The claimant was subsequently suspended following the second test. This incident was the claimant's second violation of the employer's alcohol policy and the employer sent the claimant a certified letter May 9, informing him of the

results of the test and a certified letter May 16, 2017, notifying him his employment was terminated.

The claimant's first violation of the employer's alcohol policy occurred January 18, 2017. He returned to work January 23, 2017, following an evaluation. During the first two years following a positive alcohol test, the employer has the right to ask the employee to participate in alcohol or drug testing up to five times per year.

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).

Because the claimant tested positive for intoxication due to alcohol use at work January 18, 2017, the employer had the right to request that he submit to testing for any reason or no reason up to five times per year as a condition of his return to work. The employer believed the claimant was reporting for work May 8, 2017, when he arrived around the time designated for the start of his shift and presented it with a release to return to work without restrictions effective May 6, 2017. The employer observed several signs of alcohol intoxication in the claimant and notified him he needed to accompany the employer to the nurse's office where he submitted to a breathalyzer test which was positive. The employer took him to the certified doctor's office where he again tested at .108 percent which was above the employer's allowed standard of .04 percent. The employer informed the claimant of the test results by certified mail May 9, 2017, and notified him of his termination by certified mail May 16, 2017.

The claimant argues that he was not working when he went to the employer's human resources office and provided his doctor's release May 8, 2017. He had been released to return to work May 6, 2017, however, and the employer fully believed the claimant was reporting for work when he took his doctor's note in May 8, 2017. Additionally, the claimant called the employer from the doctor's office where he was being tested for alcohol usage and reported he was ill and would not be in that day after he had already tested positive. He could not explain why he called to report he would not be in if he did not believe the employer expected him to work. Calling in sick after testing positive for alcohol use does not establish that the claimant was not working May 8, 2017.

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 June 30, 2017, reference 01, decision is affirmed. 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.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/scn