

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

**JAMES R SNYDER
2506 UNION RD #35
CEDAR FALLS IA 50613**

**MODERN BUILDERS INC
517 – 1ST AVE NE
WAVERLY IA 50677**

**Appeal Number: 04A-UI-00480-CT
OC: 11/30/03 R: 03
Claimant: Respondent (2)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5(2)a – Discharge for Misconduct
Section 96.3(7) – Recovery of Overpayments

STATEMENT OF THE CASE:

Modern Builders, Inc. filed an appeal from a representative's decision dated January 7, 2004, reference 01, which held that no disqualification would be imposed regarding James Snyder's separation from employment. After due notice was issued, a hearing was held by telephone on February 4, 2004. The employer participated by Rusty Stensland, Vice President. Exhibits One through Five were admitted on the employer's behalf. Mr. Snyder did not respond to the notice of hearing.

FINDINGS OF FACT:

Having heard the testimony of the witness and having reviewed all the evidence in the record, the administrative law judge finds: Mr. Snyder began working for Modern Builders, Inc. on August 8, 2002 as a full-time laborer. During a training meeting on April 18, 2003, he was provided a copy of the employer's substance abuse policy. The policy provides for random drug and alcohol testing. All employees are within the pool of employees to be tested, except for drivers who are covered by Department of Transportation regulations regarding testing. The individuals to be tested are selected by a computer within the control of an entity other than Modern Builders, Inc.

Mr. Snyder was working in Charles City, Iowa, on July 31, 2003 when he was notified by Rusty Stensland that he had been randomly selected to undergo testing that day. Mr. Stensland notified him by telephone at approximately 3:25 p.m. and indicated he should go to Allen Memorial Hospital in Waterloo before 5:00 p.m. that day. Mr. Snyder did not indicate that he would have any problem appearing for the test. Mr. Snyder left the job site at 3:30 and was at the employer's shop at approximately 4:25 p.m. He did not indicate at that time that he would have any problem reporting for the test. The hospital is approximately 15 minutes from the employer's shop. The hospital's lab is open 24 hours a day, seven days a week and the hours are posted on the door. Mr. Snyder did not notify anyone on July 31 that he was having a problem getting the testing completed.

On August 1, the hospital notified the employer that Mr. Snyder had not reported for his test. He did not report for work at 6:30 a.m. that day and did not call to report that he would be absent. He went to the workplace at approximately 3:30 p.m. to get his paycheck. He did not volunteer any information as to why he failed to take the drug and alcohol test or why he had not reported for scheduled work that morning. He was notified of his discharge that day. His failure to report for the test was the sole reason for the discharge. The employer's policy provides for immediate discharge if an individual refuses to submit to drug and/or alcohol testing.

Mr. Snyder has received a total of \$2,332.00 in job insurance benefits since filing his claim effective November 30, 2003.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Snyder was separated from employment for any disqualifying reason. An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct in connection with the employment. The employer had the burden of proving disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Mr. Snyder was discharged for failing to submit to a random drug and alcohol test. The administrative law judge is satisfied that the employer's selection process complies with the requirements of Iowa Code Sections 730.5(1)k and 730.5(8). The employer is allowed by Section 730.5(10) to discharge an individual who refuses to provide a testing sample pursuant to the employer's policy.

Mr. Snyder has failed to establish any good cause for not appearing for the test as scheduled. He was only 15 minutes from the test site at 4:25 p.m. and could have been at the test site before 5:00 p.m. Moreover, the lab is open after 5:00 p.m. and, therefore, he could have had the testing done after 5:00 p.m. on July 31. Mr. Snyder did not tell anyone that there was a problem in getting the required testing done. Given his failure to report for work as scheduled

or to call the employer the next day, the administrative law judge presumes that the failure to report for the test was for reasons other than an inability to arrive at the test site timely. His failure to take the test as required constituted a substantial disregard of the standards he knew the employer expected of him. For the reasons cited herein, it is concluded that disqualifying misconduct has been established and benefits are denied.

Mr. Snyder has received benefits since filing his claim. Based on the decision herein, the benefits received now constitute an overpayment and must be repaid. Iowa Code Section 96.3(7). He has had other employment since leaving Modern Builders, Inc. It is his responsibility to provide proof of his subsequent earnings to Workforce Development so that a decision can be made as to whether he had requalified for benefits prior to filing his claim effective November 30, 2003.

DECISION:

The representative's decision dated January 7, 2004, reference 01, is hereby reversed. Mr. Snyder was discharged for misconduct in connection with his employment. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he satisfies all other conditions of eligibility. Mr. Snyder has been overpaid \$2,332.00 in job insurance benefits.

cfc/s