

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JEFFREY S TURNER
Claimant

APPEAL NO. 07A-UI-07882-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

THE AMERICAN BOTTLING COMPANY
Employer

**OC: 07/15/07 R: 03
Claimant: Appellant (1)**

Iowa Code § 96.5(2)a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the August 10, 2008, reference 01, decision that denied benefits. After due notice was issued, a telephone conference hearing was held on September 5, 2007. Claimant participated. Employer participated through Brenda Dixson and Cora Vanasten.

ISSUE:

The issue is whether claimant was discharged for reasons related to job misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant was employed as a full time compounder from July 29, 2005 until July 16, 2007 when he was discharged. On July 16, he reported to work and his department manager Vanasten thought he was intoxicated at work and ordered a reasonable suspicion drug screen after he started yelling during a disciplinary notice meeting. The first test for alcohol intoxication was .25 (.08 is legal limit for driving) and the second test was .234. After the test he returned to the plant and told various coworkers (Amanda Keeton and Michael Dittrich) "if they talked shit about him he would kill them." He also made threats about Vanasten and a lab tech outside of their presence. Employer called the police and claimant left before they arrived and employer mailed the termination letter.

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 § 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.

Regardless of employer's disciplinary procedure, claimant's intoxication at work, drinking on the way to the drug screen, and threats of violence was misconduct. Benefits are denied.

DECISION:

The August 10, 2007, 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.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/css