

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**NICK M MC NAMERA**  
Claimant

**APPEAL NO: 10A-UI-11968-DW**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HICREST INC**  
Employer

**OC: 07/18/10**  
**Claimant: Respondent (2)**

Section 96.5-2-a - Discharge

**PROCEDURAL STATEMENT OF THE CASE:**

The employer appealed a representative's August 17, 2010 determination (reference 04) that held the claimant qualified to receive benefits and the employer's account subject to charge because the claimant had been discharged for nondisqualifying reasons. The claimant participated in the hearing with his attorney, Jean Massa. Todd Nielsen, Attorney at law, represented the employer. Dennis Green, Rick Mordock and Billy Stuart appeared on the employer's behalf. During the hearing, Employer Exhibits One and Two were offered and admitted as evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is not qualified to receive benefits.

**ISSUE:**

Did the employer discharge the claimant for reasons constituting work-connected misconduct?

**FINDINGS OF FACT:**

Before the employer hired the claimant, Stuart, the co-owner, and two employees, Green and Mordock, interviewed the claimant in January 2010. Since the employer knew the claimant had back surgery, the employer asked if he took any medication. The claimant told the employer, the three men, he did not. Based on the claimant's statement that he did not take any medication or any pain medication, the employer hired the claimant to work as a full-time mechanic to do front end alignments and front end repairs. The employer hired the claimant to do the same kind of work he was doing for another employer in Creston.

After the claimant went to a doctor in July 2010, for a possible work-related injury, the employer learned the claimant had pain medication at his home. The claimant went to a doctor on July 2. When doctor asked about medications he took, the claimant informed the doctor he had some pain medication at home. The doctor recorded this information in the claimant's clinic notes. (Employer Exhibit One.)

The doctor initially restricted the claimant from doing any lifting. The claimant returned to work, but the employer did not have any work for him to do with his work restrictions. After the claimant was re-evaluated on July 19, 2010, Stuart was back from a vacation. After his

re-evaluation, the claimant still had work restrictions that the employer could not accommodate. The employer turned the matter over to the workers' compensation insurance carrier.

Between July 19 and July 22, Stuart read the doctor's report and noticed the claimant reported that he had pain medication at home. Based on the doctor's July 2 clinic notes the employer concluded the claimant had not been truthful during his interview when he told the employer he did not take any pain medication. If the claimant had told the employer he took pain medication, the employer would not have hired him. About the same time the claimant interviewed for the job, he had his pain medication refilled at the University of Iowa hospital. (Employer Exhibit Two.) The claimant has taken pain medication up to four nights at week even when he worked for his previous employer because he has residual pain.

Even though the employer had not expressed any concern with the claimant's work before July, the employer discharged the claimant on July 22 because he had not been honest during his interview and failed to reveal he regularly took pain medication at night.

### **REASONING AND CONCLUSIONS OF LAW:**

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The decision in this case is not based on 871 IAC 24.32(6), since this regulations relies on information on a written application form. The problem in this case is that the employer remembers asking the claimant if he took any medication and the claimant does not remember this question being asked. The employer's testimony that the claimant would not have been hired if the employer had known he was took pain medication is credible. This is supported by the fact that after Stuart learned the claimant had pain medication at his home, he discharged the claimant for not being truthful during his interview.

Even though the claimant was able to do the work, just as he had done for another employer, the claimant failed to disclose that he took pain medication when he interviewed for the job and was asked about this. Since the employer would not have hired him if the claimant had been truthful, the claimant intentionally and substantially disregarded the standard of behavior an employer has a right to expect when interviewing potential employees. For unemployment insurance purposes, the employer discharged the claimant for work-connected misconduct after learning the claimant had and took pain medication. The employer discharged the claimant for work-connected misconduct. As of July 18, 2010, the claimant is not qualified to receive benefits.

### **DECISION:**

The representative's August 17, 2010 decision (reference 04) is reversed. The employer discharged the claimant for reasons constituting work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of July 18, 2010. This

disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/css