

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHAEL E MCCAULEY
Claimant

APPEAL NO. 07A-UI-05968-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MERCY HEALTH SERVICES
Employer

**OC: 05/20/07 R: 02
Claimant: Appellant (1)**

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Michael McCauley filed an appeal from a representative's decision dated June 6, 2007, reference 01, which denied benefits based on his separation from Mercy Health Services (Mercy). After due notice was issued, a hearing was held by telephone on July 2, 2007. Mr. McCauley participated personally. The employer participated by Aimee Kern, Employee Relations Coordinator.

ISSUE:

At issue in this matter is whether Mr. McCauley 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. McCauley was employed by Mercy from January 12, 1981 until May 14, 2007. He was employed full time as a mechanic. He was discharged for reporting to work under the influence of alcohol.

Mr. McCauley tested positive for the presence of alcohol on March 2, 2007 and was suspended from work for three days. He was offered the opportunity for treatment and sought assistance from the Employee Assistance Program (EAP). He complied with the treatment mandates of EAP. On May 14, 2007, he smelled of alcohol and was argumentative. Therefore, he was again tested for the presence of alcohol and again tested positive. Mr. McCauley consumed approximately one-half pint of vodka the night of May 13. He stopped drinking approximately five to six hours before he was to report for work. As a result of his presence at work while under the influence of alcohol on May 14, Mr. McCauley was discharged.

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). Mr. McCauley was discharged for reporting to work under the influence of alcohol in violation of the employer's work rules. He had been suspended for such conduct in March of 2007. Therefore, he knew that the conduct was contrary to the employer's standards and might subject him to discharge.

The employer did not provide sufficient information to establish that the alcohol testing complied with the requirements of Iowa Code section 730.5, Iowa's drug testing law. Specifically, the employer did not provide a copy of the policy or a record of the specific test results. Negative test results cannot form the basis of a misconduct disqualification unless the testing complied with the requirements of the law. See Eaton v. Iowa Employment Appeal Board, 602 N.W.2d 553, 557 (Iowa 1999). For the above reasons, the administrative law judge concludes that the test results should not be a factor in the decision herein.

The exclusion of the test results does not mean the administrative law judge cannot consider other factors independent of the test results. In the case at hand, Mr. McCauley reported to work smelling of alcohol on May 14. He was also uncharacteristically argumentative on that date. The test results only confirmed what the employer suspected from its observations of Mr. McCauley. It is concluded that he was at work under the influence of alcohol in violation of the employer's rules. He had been warned in March about such conduct and had gone to EAP for assistance at that time. Based on the prior disciplinary action, the administrative law judge concludes that his conduct of May 14 constituted a substantial disregard of the standards he knew the employer expected of him. Accordingly, benefits are denied.

DECISION:

The representative's decision dated June 6, 2007, reference 01, is hereby affirmed. Mr. McCauley 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.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/pjs