

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

MICHAEL L BRITTON
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IOWA CITY IA 52240

THE UNIVERSITY OF IOWA
ATTN DAVE BERGEON
121 "R" UNIVERSITY SERVICE BLDG
IOWA CITY IA 52242

ED ALCOCK
AFSCME LOCAL #12
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IOWA CITY IA 52240

Appeal Number: 05A-UI-08402-CT
OC: 07/17/05 R: 03
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Michael Britton filed an appeal from a representative's decision dated August 11, 2005, reference 01, which denied benefits based on his separation from The University of Iowa (UI). After due notice was issued, a hearing was held by telephone on August 31, 2005. Mr. Britton participated personally and was represented by Ed Alcock of AFSCME Local #12. The employer participated by Dave Bergeon, Human Resources Specialist, and Suzanne Hilleman, Human Resources Manager for Facilities Management.

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. Britton was employed by UI from March 25, 1998

until July 20, 2005. He was employed full time as a custodian. Mr. Britton was discharged for several rules violations resulting from conduct on July 14, 2005.

At approximately 11:40 p.m. on July 14, the employer received a report that Mr. Britton was observed during work hours purchasing alcohol at a store across the street from where he worked. He had left the campus during a break but did not have permission to do so. Employees are not allowed to leave campus during their paid breaks unless permission to do so has been granted. Shortly after receiving the report that Mr. Britton was purchasing alcohol while on duty, three supervisors and a public safety officer went to the building where he was assigned to work. He and another employee were found in a room with the lights out watching television. It was not a scheduled break time. The public safety officer conducted a sobriety test as well as a breathalyzer test on Mr. Britton. He registered .085 blood alcohol content on the breathalyzer. He told the employer he had purchased one beer and began drinking it on the way back to work, finishing it while on campus. The employer's work rules prohibit having alcohol on campus.

Mr. Britton had received a written warning on March 1, 2005 for being under the influence of alcohol or a controlled substance while at work. As a result of the events of July 14, he was immediately suspended from work and notified of his discharge on July 20, 2005.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Britton 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. 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). For reasons that follow, it is concluded that the employer has met its burden of proof. Mr. Britton left campus without permission during a paid break, in violation of a known rule. He testified that there was no supervisor around to ask if he could leave. Given that, he should have remained on campus as his need to leave was not based on any emergency. Mr. Britton was watching television when he should have been performing work duties. He testified that he was performing cleaning duties. This contention is not well-taken in light of the fact that the lights were out in the room. By his own admission to the employer, Mr. Britton was consuming beer on campus in violation of a known rule. Most importantly, he was at work while under the influence of alcohol. His blood alcohol level was .085, a level that could have resulted in criminal charges if he had been operating a motor vehicle. Mr. Britton denied that he consumed more than one beer on his break or that he had consumed alcohol before coming to work. The administrative law judge is not inclined to believe that his blood alcohol level would at .085 from only one beer.

Mr. Britton had been warned on March 1, 2005 about being at work under the influence of illicit drugs or alcohol. Therefore, he knew that such conduct could result in his discharge. The administrative law judge concludes that his conduct in leaving campus without permission, drinking alcohol on campus, watching television while on duty, and being under the influence of alcohol constituted a substantial disregard of the employer's standards. Therefore, benefits are denied.

DECISION:

The representative's decision dated August 11, 2005, reference 01, is hereby affirmed. Mr. Britton was discharged by UI for disqualifying 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 job insurance benefit amount, provided he satisfies all other conditions of eligibility.

cfc/kjw