

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RODNEY G FRY
Claimant

APPEAL NO. 11A-UI-07890-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WELLMAN DYNAMICS INC
Employer

**OC: 05/15/11
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Rodney G. Fry filed a timely appeal from an unemployment insurance decision dated June 10, 2011, reference 01, that disqualified him for benefits. After due notice was issued, a telephone hearing was held July 12, 2011 with Mr. Fry participating. His former employer, Wellman Dynamics, Inc., did not respond to the hearing notice.

ISSUE:

Was the claimant discharged for misconduct in connection with his employment?

FINDINGS OF FACT:

Rodney G. Fry was employed by Wellman Dynamics, Inc. from January 2008 until he was discharged on or about May 11, 2011. The company has a written drug and alcohol testing policy. Mr. Fry was selected for a random test on May 11, 2011. He refused to take the test without first consulting with a union representative because medical staff at the collection site were to be present when he gave his urine specimen. He was discharged for refusing to take the test.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence establishes that the claimant was discharged for misconduct in connection with his employment. It does.

Iowa Code section 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.

The claimant's testimony establishes the existence of an alcohol and drug testing policy, the fact that he was notified of the test, was transported by the employer to the collection site and that he refused to take the test even though he had done so in the past. His refusal is sufficient to establish misconduct. Benefits are withheld.

DECISION:

The unemployment insurance decision dated June 10, 2011, reference 01, is affirmed. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

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