

**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**

**STANLEY E GREEN  
335 – 3<sup>rd</sup> AVE CT APT 205  
SILVIS IL 61282-2134**

**APAC CUSTOMER SERVICES INC  
C/o TALX UC EXPRESS  
PO BOX 283  
ST LOUIS MO 63166-0283**

**Appeal Number: 06A-UI-05417-HT  
OC: 04/23/06 R: 12  
Claimant: Appellant (2)**

**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, 4<sup>th</sup> 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Stanley Green, filed an appeal from a decision dated May 11, 2006, reference 01. The decision disqualified him from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on June 12, 2006. The claimant participated on his own behalf. The employer, APAC, participated by Benefits Administrator Turkeesa Hill and Operations Manager Tara Pilkington.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Stanley Green was employed by APAC from May 9,

2005 until April 25, 2006. He was a full-time team leader. At the time of hire the claimant received a copy of the employer's drug policy, and an updated version on August 1, 2005. The policy notified employees they may be tested randomly or upon "reasonable suspicion." Refusal to submit to a drug test is grounds for discharge.

On April 25, 2006, the claimant was late for work and not in compliance with the dress code. Operations Manager Tara Pilkington spoke with him about these problems and he became "defensive and argumentative." There had been problems in the past with him being tardy to work, sometimes as much as two hours. Some of his absences were due to illness and he had doctor's excuses, and those absences not due to illness he took as vacation. She had also had problems with him remembering to do tasks she had assigned him so she set up a "communications log" in which she noted his assignments and he initialed he had received them in case there were any questions in the future.

Ms. Pilkington found the claimant's defensiveness and aggressiveness on April 25, 2006 to be of concern, so she stopped the discussion and consulted with Human Resources Director Katherine Hughes. Ms. Hughes indicated she had received an anonymous phone call stating Mr. Green was using drugs and when she met with him she asked him to take a drug test. He said he would agree to do so if the caller could be identified, but as the call was anonymous, the employer could not comply. He refused to take the test even though he was notified he could be discharged.

#### REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes he is not.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

Under the provisions of Iowa Code chapter 730.5, an employer may do a random drug test upon "reasonable suspicion" an employee is under the influence of controlled substances while at work. In the present case the employer has failed to provide any convincing evidence which would constitute reasonable suspicion. Tardiness alone is insufficient to establish drug usage, and so is being "argumentative and defensive." Likewise, an anonymous phone call is simply not a reliable indication of drug usage and could be nothing more than someone making a prank call and/or prompted by some personal grudge.

The employer was unable to provide any specific information given by the anonymous caller which would be sufficient basis for reasonable suspicion. Without reasonable suspicion the employer had no basis for requesting a drug test and the claimant's refusal cannot be considered misconduct. Disqualification may not be imposed.

DECISION:

The representative's decision of May 11, 2006, reference 01, is reversed. Stanley Green is qualified for benefits, provided he is otherwise eligible.

bgh/cs