

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DALLAS R FLOYD
Claimant

APPEAL NO: 09A-UI-16422-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WELLMAN DYNAMICS INC
Employer

OC: 10/04/09
Claimant: Respondent (2/R)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The employer appealed a representative's October 27, 2009 decision (reference 01) that concluded the claimant was qualified to receive benefits, and the employers' account was subject to charge because the claimant had been discharged for nondisqualifying reasons. A telephone hearing was held on December 7, 2009. The claimant responded to the hearing notice, but was not available for the hearing. Amy Reed, the human resource supervisor, appeared on the employer's behalf. Based on the evidence, the arguments of the claimant, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

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

FINDINGS OF FACT:

The claimant started working for the employer on July 3, 2007. He worked full-time. The employer's union contract informs employees that if they have four written warnings in a rolling calendar year, they will be discharged.

The claimant received a written warning on April 22, 2009, for a smoking violation. On June 24 and July 8, he received his second and third written warnings for unexcused absences. The employer allows employees seven full days of absences and seven days of a partial absence, report to work late or leave work early. After an employee uses these allotted absences, the employer started giving the employee written warnings for unexcused absences. The July 8, third written warning informed the claimant that if he had another written warning, he would be discharged.

On October 1, 2009, the employer received complaints from co-workers that the claimant was working under the influence. The employer asked the claimant to stake a Breathalyzer test. The claimant refused to take the test. The claimant's refusal meant he would receive a written warning and a suspension. Instead, of waiting for the fourth written warning, the claimant

walked off the job. On October 2, 2009, the employer sent the claimant a certified letter with his fourth written warning and his termination letter.

The claimant established a claim for benefits during the week of October 4, 2009. The claimant has filed for and received benefits since October 4, 2009.

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 claimant's conduct on October 1, his refusal to take a Breathalyzer test and walking off the job, amounts to work-connected misconduct. The claimant knew or should have known he would receive a written warning for refusing to take a Breathalyzer test. The claimant also knew or should have known he would be discharged if he received a fourth written warning. Since the claimant's action constitute work-connected misconduct, he is disqualified him from receiving benefits as of October 4, 2009.

The issue of overpayment or waiver of overpayment will be remanded to the Claims Section to determine.

DECISION:

The representative's October 27, 2009 decision (reference 01) is reversed. The employer discharged the claimant for reasons constituting work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of October 4, 2009. 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. The issue of overpayment or whether the claimant is eligible for a waiver of any overpayment is remanded to the Claims Section to determine.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css