

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MARK L VODOCHODSKY**  
Claimant

**APPEAL NO. 11A-UI-00117-S2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**THE AMERICAN BOTTLING COMPANY**  
Employer

**OC: 10/31/10**  
**Claimant: Appellant (1)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Mark Vodochodsky (claimant) appealed a representative's December 27, 2010 decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits because he was discharged from work with The American Bottling Company (employer) for dishonesty in connection with his work. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for February 10, 2011. The claimant was represented by Eric Eshelman, Attorney at Law, and participated personally. The employer participated by Mark Mattox, Human Resources Manager, and James Smedley, Operations Manager.

**ISSUE:**

The issue is whether the claimant was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on June 4, 2007, as a full-time loader warehouse worker. The claimant signed for receipt of the employer's handbook on June 4, 2007. In the last year of employment the employer issued the claimant three warnings for attendance issues and two warnings for performance issues. The employer notified the claimant that further infractions could result in termination from employment.

On August 10, 2010, the claimant suffered a work-related injury and saw the company physician with regard to the injury. The claimant performed light-duty work after the injury. On October 21, 2010, the claimant gave the operations manager a patient status report from his physician stating he should return to work on October 22, 2010. The date appeared to be altered and the employer contacted the physician's office. The physician's office provided the employer with the patient status report that had been given to the claimant. The return to work date was October 21, 2010. The employer terminated the claimant on October 29, 2010.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was discharged for misconduct.

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 employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). As persuasive authority, the falsification of an activity log book constitutes job misconduct. Smith v. Sorensen, 222 Nebraska 599, 386 N.W.2d 5 (1986). The claimant clearly disregarded the standards of behavior which an employer has a right to expect of its employees. The claimant's actions were volitional. When a claimant intentionally disregards the standards of behavior that the employer has a right to expect of its employees, the claimant's actions are misconduct. The claimant was discharged for misconduct.

The claimant's and the employer's testimony was inconsistent. The administrative law judge finds the employer's testimony to be more credible. The employer provided two eye witnesses to support its case. In addition, the claimant testified that he did not work on October 21, 2010, because the note stated he should return to work on October 22, 2010. Later he said he did not work on October 21, 2010, because he was told not to work on that date by the employer.

**DECISION:**

The representative's December 27, 2010 decision (reference 01) is affirmed. The claimant is not eligible to receive unemployment insurance benefits because the claimant was discharged from work for misconduct. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount provided the claimant is otherwise eligible.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

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