

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MARTIN J COSSMAN**  
Claimant

**APPEAL NO. 09A-UI-07468-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**BE & K CONSTRUCTION COMPANY**  
Employer

**OC: 03/29/09**  
**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The employer appealed a department representative's decision dated May 6, 2009, reference 02, that held he was dismissed from work on April 2, 2009, for no misconduct and benefits are allowed.

A telephone hearing was scheduled for June 3, 2009. The claimant did not participate. The employer did not participate.

**ISSUE:**

The issue is whether the claimant was discharged for misconduct in connection with employment.

**FINDINGS OF FACT:**

The administrative law judge, having considered all of the evidence in the record, finds: The claimant worked for the employer from July 12, 2003, until his discharge on April 2, 2009. The claimant was discharged for violation of the employer's drug/alcohol policy.

Although notices of the date and time for hearing were mailed to the claimant and employer, to their address of record, they failed to respond and call in for the hearing.

**REASONING AND CONCLUSIONS OF LAW:**

The administrative law judge concludes that the employer has failed to establish the claimant was discharged for misconduct in connection with the employment on April 2, 2009.

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.

The employer failed to participate in the hearing and offer evidence to establish that the claimant did violate their drug/alcohol policy and may be considered as an act of misconduct in connection with employment.

**DECISION:**

The decision of the department representative dated May 6, 2009, reference 02, is affirmed. The employer has failed to establish the claimant was discharged for misconduct in connection with employment on April 2, 2009. Benefits are allowed, provided the claimant is otherwise eligible.

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R. L. Stephenson  
Administrative Law Judge

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Decision Dated and Mailed

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