

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**WAYNE F PAYNE**  
Claimant

**APPEAL NO. 09A-UI-00528-AT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**GEE ASPHALT SYSTEMS INC**  
Employer

**OC: 11/16/08 R: 03**  
**Claimant: Appellant (1)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Wayne F. Payne filed a timely appeal from an unemployment insurance decision dated January 5, 2009, reference 01, that disqualified him for benefits. After due notice was issued, a telephone hearing was held January 29, 2009, with Mr. Payne participating. General Manager Dale Campbell and Crewmember Brad Alcorn participated for the employer, Gee Asphalt Systems, Inc. Exhibit One was admitted into evidence.

**ISSUE:**

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

**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: Wayne F. Payne was employed as a crewmember by Gee Asphalt Systems, Inc., from April 29, 2005, until he was discharged May 29, 2008. The company prohibits drinking or being under the influence of alcohol on the job site. On May 29, 2008, Supervisor Rick Seibel and Crewmember Brad Alcorn observed Mr. Payne slurring his words and stumbling. The quality of his workmanship was below standard. His breathe smelled of alcohol. They also found a 7-Up bottle containing alcohol in a company vehicle that Mr. Payne drove at the job site. He was discharged as a result of this.

**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 employer has the burden of proof. See Iowa Code section 96.6-2. While Mr. Payne denied the allegations, the administrative law judge finds the testimony of Mr. Alcorn, a crewmember and not a member of management, to be credible. The administrative law judge concludes that Mr. Alcorn was in a position to observe the events leading to discharge and would have little or no incentive to exaggerate. Benefits must be withheld.

**DECISION:**

The unemployment insurance decision dated January 5, 2009, 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.

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Dan Anderson  
Administrative Law Judge

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Decision Dated and Mailed

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