

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Baird was employed by Tyson from September 22, 2003 until October 11, 2004 as a full-time maintenance and grounds man. He was discharged for possession and consumption of alcohol on company premises in violation of a known work rule. On the morning of October 10, 2004, a coworker advised the maintenance supervisor that Mr. Baird appeared to be staggering as he went through the parking lot. The supervisor went to the guard's shack to view the surveillance tape and observed Mr. Baird go to his vehicle and drink something from a can. He asked the guard to advise him if Mr. Baird returned to his vehicle.

When Mr. Baird returned to his vehicle a second time on October 10, the guard notified the supervisor, who came to the guard shack to observe Mr. Baird. He watched him go to his vehicle and again drink something from a can. He could not determine whether it was a beer can or a soft drink can. The supervisor went to Mr. Baird's vehicle and observed a 12-pack case of Natural Ice beer with from five to seven unopened cans in it. He also observed several empty cans between the seat and the door. There was also what appeared to be a bottle of alcohol but only the top was visible. He could not determine whether the bottle was empty or contained liquid. As a result of the observations of October 10, Mr. Baird was discharged on October 11, 2005.

In March of 2004, Mr. Baird had violated the employer's alcohol policy by appearing at work while under the influence of alcohol. He chose to undergo "self rehabilitation" rather than enter a treatment facility. He was at all times aware of the employer's policies regarding alcohol in the workplace.

Mr. Baird has received a total of \$2,268.00 in job insurance benefits since filing his claim effective September 11, 2005.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Baird was separated from employment for any disqualifying reason. An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Mr. Baird was discharged for consuming alcohol on work time and for having alcohol on the employer's property, both of which are violations of known policies. Mr. Baird went to his vehicle on two occasions on October 10. The administrative law judge is not inclined to believe that he would make two trips to his vehicle to drink soft drinks, as he contended. It seems it would have been easier to simply take the can with him as he proceeded around the grounds performing his job.

The employer was unable to determine that it was, in fact, beer that Mr. Baird was consuming at his vehicle. However, given the surrounding circumstances, the administrative law judge is inclined to believe that he was drinking beer. A coworker reported that he was staggering in the parking lot. He made two trips to his vehicle during the work day and drank something from a can. These factors, along with the discovery of full cans of beer and empty beer cans in his vehicle, persuade the administrative law judge that Mr. Baird was drinking on the job. Furthermore, it was a violation of the employer's policy to even have alcohol in his vehicle in the company parking lot. Inasmuch as this was Mr. Baird's second violation of the alcohol policy,

the administrative law judge concludes that disqualifying misconduct has been established. Accordingly, benefits are denied.

Mr. Baird has received benefits since filing his claim. Based on the decision herein, the benefits received now constitute an overpayment and must be repaid. Iowa Code section 96.3(7).

DECISION:

The representative's decision dated October 10, 2005, reference 03, is hereby reversed. Mr. Baird was discharged for misconduct in connection with his employment. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he satisfies all other conditions of eligibility. Mr. Baird has been overpaid \$2,268.00 in job insurance benefits.

cfc/kjw