

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**PHUC D NGUYEN**

Claimant

**APPEAL NO. 06A-UI-11024-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**JOHN MORRELL AND COMPANY**

Employer

**OC: 10-08-06 R: 01  
Claimant: Appellant (1)**

Section 96.5-1 – Voluntary Quit  
Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

The claimant filed an appeal from a decision of a representative dated November 2, 2006, reference 01, which held the claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on November 29, 2006. The claimant participated. The employer participated by Steve Joyce, Human Resources Director. Participating as an official interpreter was Phung Nguyen.

**ISSUE:**

The issue in this matter 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: The claimant last worked for John Morrell and Company from August 16, 2004 until October 6, 2006 when he was discharged from employment. Claimant was a production worker paid by the hour. On or about October 6, 2006, it was noted that Mr. Nguyen appeared to be acting in an unusual manner and it was noted the claimant smelled of alcohol. Per company policy, the claimant was given a drug and alcohol test. The alcohol test showed that the claimant had an alcohol level of .063 for a breathalyzer reading. The claimant's drug test showed the presence of marijuana in the claimant's system. Mr. Nguyen freely admitted drinking alcohol before reporting to work and admitted to smoking marijuana resulting in his inability to pass the drug or alcohol screen. The claimant was provided his rights by the company and per a certified letter was given the opportunity to request a split sample for a confirmatory test. Mr. Nguyen did not exercise that right.

The claimant's appeal was filed two days after the statutory 10-day appeal period because of language difficulties and the inability of Mr. Nguyen to locate an interpreter who could fully and accurately interpret the representative's decision.

## **REASONING AND CONCLUSIONS OF LAW:**

Iowa Code section 96.6-2 provides:

2. Initial determination. A representative designated by the director shall promptly notify all interested parties to the claim of its filing, and the parties have ten days from the date of mailing the notice of the filing of the claim by ordinary mail to the last known address to protest payment of benefits to the claimant. The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. The claimant has the burden of proving that the claimant meets the basic eligibility conditions of section 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to section 96.5, except as provided by this subsection. The claimant has the initial burden to produce evidence showing that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 10, and has the burden of proving that a voluntary quit pursuant to section 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 1, paragraphs "a" through "h". Unless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision. If an administrative law judge affirms a decision of the representative, or the appeal board affirms a decision of the administrative law judge allowing benefits, the benefits shall be paid regardless of any appeal which is thereafter taken, but if the decision is finally reversed, no employer's account shall be charged with benefits so paid and this relief from charges shall apply to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The administrative law judge finds that the claimant has established good cause for filing his appeal two days outside the 10-day appeal period. Based upon the claimant's inability to find a satisfactory interpreter to interpret and explain the representative's decision to the claimant in his native language. It appears that the claimant was diligent in his attempt to secure the document to be interpreted promptly and to file his appeal as soon as possible.

For the reasons that follow the administrative law judge concludes the claimant was discharged from employment due to job-related 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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The claimant admitted use of alcohol on the day that he reported to work and was confronted and suspended. The claimant also admitted to the use of marijuana during a time frame that would result in a positive drug screen. Therefore, the employer has met the requirements of the administrative code regarding drug and alcohol testing in this matter. The claimant's alcohol screen was positive based upon his consumption of alcohol shortly before reporting to work on the day in question. Claimant's drug screen was positive based upon his use of illegal substances and the claimant did not request re-testing on the sample that was available to him. The claimant is required to be drug free in the work place. Violation of a known work rule constitutes misconduct.

#### **DECISION:**

The November 2, 2006, reference 01, decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has

worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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