

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MIKE TIERNAN

Claimant

APPEAL NO. 07A-UI-02801-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

LE CLAIRE MANUFACTURING CO

Employer

**OC: 02/18/07 R: 04
Claimant: Appellant (1)**

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Mike Tiernan filed an appeal from a representative's decision dated March 12, 2007, reference 01, which denied benefits based on his separation from Le Claire Manufacturing Company. After due notice was issued, a hearing was held by telephone on April 5, 2007. Mr. Tiernan participated personally. Exhibits A, B, and C were admitted on his behalf. The employer participated by Ralph Valle, Core Room Supervisor, and Terry White, Night Supervisor.

ISSUE:

At issue in this matter is whether Mr. Tiernan was separated from employment for any disqualifying reason.

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. Tiernan was employed by Le Claire Manufacturing Company from May 2, 2006 until January 25, 2007. He worked full time as a machine operator.

Mr. Tiernan reported to work ten minutes before his 3:00 p.m. shift on January 23, 2007 and clocked in. Shortly after his arrival, he notified the supervisor, Terry White, that he was still "high" from the night before and needed to go home. Mr. White could smell alcohol on him. He advised Mr. Tiernan that he would have to undergo a drug and alcohol screening. The screening revealed the presence of alcohol but no illicit drugs. The employer has a zero-tolerance policy regarding alcohol and drugs. Therefore, Mr. Tiernan was notified of his discharge in a letter dated January 25, 2007.

Mr. Tiernan got off work at approximately midnight on January 22 and began consuming alcohol at about that time. He was drinking vodka and orange juice but does not have a specific recollection as to how much he consumed. Nor does he have a specific recollection as to when he stopped drinking. The presence of alcohol in his system while at work was the sole reason for Mr. Tiernan's discharge.

REASONING AND CONCLUSIONS OF LAW:

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. Tiernan was discharged for reporting to work while under the influence of alcohol in violation of a known company policy. The fact that he reported the condition himself is immaterial. The fact remains that he was in violation of the employer's alcohol-free policy, which is a zero-tolerance policy. The administrative law judge need not consider the breathalyzer reports as the testimony establishes that Mr. Tiernan was at work with alcohol in his system. He testified concerning his consumption of alcohol and Mr. White testified to smelling alcohol on him. The administrative law judge considers this sufficient to establish a violation of the employer's policy.

Mr. Tiernan was aware of the employer's work rules. The administrative law judge is not inclined to believe he did not know before leaving home that he was still feeling the effects of the alcohol he had consumed in the preceding hours. His decision to go to work in spite of being under the influence of alcohol constituted a substantial disregard of the employer's interests. Mr. Tiernan worked around heavy machinery with moving parts. There are two tables in the area that move up and down with multiple pinch points that could cause injury. An employee under the influence of alcohol poses a safety risk to himself as well as others in the workplace. For the reasons cited herein, the administrative law judge concludes that disqualifying misconduct has been established. Accordingly, benefits are denied.

DECISION:

The representative's decision dated March 12, 2007, reference 01, is hereby affirmed. Mr. Tiernan 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.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/css