

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**WILLIAM D GAY**  
Claimant

**APPEAL NO: 13A-UI-11143-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SAUER-DANFOSS (US) COMPANY**  
Employer

**OC: 08/18/13**  
**Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

William D. Gay (claimant) appealed a representative's September 24, 2013 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment from Sauer-Danfoss (US) Company (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on October 24, 2013. The claimant participated in the hearing and was represented by Bryan Barker, Attorney at Law. Jill Bidwell appeared on the employer's behalf and presented testimony from two witnesses, Brent Robinson and Nicole Boeding. During the hearing, Employer's Exhibits One and Two and Claimant's Exhibit A were entered into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

Was the claimant discharged for work-connected misconduct?

**OUTCOME:**

Affirmed. Benefits denied.

**FINDINGS OF FACT:**

After a prior period of employment with the employer, the claimant most recently started working for the employer on March 29, 2010. He worked full time as production machine technician on the third shift in the employer's Ames, Iowa hydrostatic pump and motor manufacturing facility. His last shift of work was the shift that started at 10:00 p.m. on August 6 and which was scheduled to end at 6:00 a.m. on August 7, 2013. The employer discharged him on August 7, 2013. The stated reason for the discharge was refusing to submit to a reasonable suspicion drug test.

The claimant was uncharacteristically 2.5 hours late for the start of the shift on the evening of August 6; he arrived only shortly before a 1:00 a.m. weekly quality meeting. While the claimant was not always included in these meetings, on this occasion he was asked to join into the

meeting, as others who would normally participate were not available. The meeting lasted just over an hour. During the meeting the claimant was disruptive and appeared to ramble off topic. After the meeting, Robinson, a production team leader, spoke further with the claimant to seek to follow up on some concerns the claimant had been attempting to raise; he asked the claimant to forward to him an email the claimant stated that he had sent to another manager. This conversation concluded between 2:15 a.m. and 2:30 a.m. Sometime thereafter Robinson determined that the claimant had left the plant and gone home almost immediately after the two had finished speaking.

The claimant went home, purportedly to forward the requested email to Robinson, although he had access to computers in the facility from which he could have done this. The claimant spent most of the remainder of the shift sending various emails to various other persons employed with the employer, most with rather cryptic or puzzling messages. Robinson became aware of these emails. Robinson had received training regarding recognizing signs of drug and alcohol impairment, and was concerned that the claimant was exhibiting these signs, including paranoia. On the morning of August 7 he expressed these concerns to human resources generalist Boeding, who agreed that a drug test should be arranged for the claimant under the employer's drug testing policy, which did provide for reasonable suspicion testing.

The claimant asserted that he had gone home shortly after 2:15 a.m. because he was not feeling well; however, despite this claim he did not rest, but rather sent the various emails to the various other employees until approximately 7:00 a.m. About that time he then took off on a trip to Kansas City to see family members, a one-way trip of about four hours, even though he was scheduled to be back to work at 10:00 p.m. that evening. As a result, when Boeding called him at about 12:00 p.m. to tell him he could not return to work until he had submitted to a drug test and that he was supposed to report for a drug test at 2:30 p.m., he indicated that he would not be able to do so because he was in Kansas City. She then confirmed with him that he did not need to report at the previously given time for the drug test. He asserted that he interpreted this as meaning he did not have to submit to a drug test at all.

The employer's intention was to have the claimant submit to a drug test at 10:00 p.m. before he reported in for work. The claimant did arrive at the facility at 10:00 p.m. and Robinson told him a number of times that he was being required to submit to a drug test before he reported for work. The claimant refused to comply, even physically dodging around Robinson to get into the workplace; he got to the employer's intercom system and started to make a general announcement about an unsafe workplace. He was then forcibly removed from the building. While outside the building the claimant picked up a hose and indicated that he was going to water the grass to try to get some grass to grow. Local police were then called.

The police arrived and did take the claimant to a local hospital. As a result of that examination, on August 7 the claimant was diagnosed with acute renal failure and dehydration, which conceivably could have caused erratic behavior. On August 8, because of the claimant's refusal to submit to the drug test when he reported for work on the evening of August 7, the employer discharged the claimant.

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

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer

has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982); Iowa Code § 96.5-2-a.

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445 (Iowa 1979); *Henry v. Iowa Department of Job Service*, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. 871 IAC 24.32(1)a; *Huntoon*, supra; *Henry*, supra. In contrast, 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. 871 IAC 24.32(1)a; *Huntoon*, supra; *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984).

A violation of an employer's drug and alcohol policy, including by refusing to submit to authorized testing, can be misconduct. Iowa Code § 730.5(1) does allow employers to require employees to submit to reasonable suspicion drug testing; two of the criteria which can establish "reasonable suspicion" are:

- (1) Observable phenomena while at work such as direct observation of alcohol or drug use or abuse or of the physical symptoms or manifestations of being impaired due to alcohol or other drug use.
- (2) Abnormal conduct or erratic behavior while at work or a significant deterioration in work performance.

Here, the question is not whether the claimant ultimately was or was not under the influence of some substance which affected his behavior, but whether the claimant's refusal to submit to the testing the employer was requiring was misconduct. Even if the claimant's behavior might have actually been affected by a physical ailment other than drugs or alcohol, there has been no showing that the physical ailment prevented the claimant from being able to having sufficient intent necessary to be misconduct when he refused to submit to the requested test. As the claimant refused to submit to the employer's sought testing, it cannot be determined now whether there was or was not some drug or alcohol that could have factored into the medical diagnosis which was made; notably, the claimant did not submit any medical reports from his hospital visit on August 7 to August 8. The exhibited behavior itself was "reasonable suspicion" under the law and the employer's policies; had the claimant submitted to the test, those test results might also have alerted the parties to the claimant having an underlying ailment. The claimant's refusal to submit to a properly authorized drug test shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. The employer discharged the claimant for reasons amounting to work-connected misconduct.

**DECISION:**

The representative's September 24, 2013 decision (reference 01) is affirmed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of August 8, 2013. This disqualification continues until the claimant has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged.

---

Lynette A. F. Donner  
Administrative Law Judge

---

Decision Dated and Mailed

ld/css