

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**GINO HALE**  
Claimant

**MUSCO SPORTS LIGHTING LLC**  
Employer

**APPEAL NO: 10A-UI-17757-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 11/28/10  
Claimant: Respondent (1)**

Section 96.5-2-a - Discharge  
Section 730.5 – Iowa Drug Testing

**STATEMENT OF THE CASE:**

The employer appealed a department decision dated December 23, 2010, reference 01, that held the claimant was not discharged for misconduct on November 15, 2010, and benefits are allowed. A telephone hearing was held on February 10, 2011. The claimant participated. Cassie Barber, HR, participated for the employer.

**ISSUE:**

Whether the claimant was discharged for misconduct in connection with employment.

**FINDINGS OF FACT:**

The administrative law judge having heard the testimony of the witnesses, and having considered the evidence in the record, finds: The claimant began employment on February 11, 2008, and last worked for the employer as a full-time material operator on November 15, 2010. The claimant consented to drug testing on June 21, 2010 and he tested positive for amphetamines. The employer gave the claimant an opportunity for continuing employment through a rehabilitation process. After going through rehab, the claimant returned to work on August 9.

The claimant worked a ten-hour second shift on November 15. During the shift, the claimant became ill to the point of diarrhea and he went to the break room for rest. Co-workers later reported to the employer that claimant was talking erratically and acting in an unusual manner. He was never approached or questioned by his supervisor about his behavior.

The claimant's girlfriend reported his absence due to illness on November 16, and he saw his doctor the following day. After the doctor visit, he went into work prior to the start of his shift to provide a doctor's excuse from work. The employer responded by requesting claimant to submit to drug testing due to reasonable suspicion and he agreed.

While at the testing facility, claimant was unable to provide a sufficient urine sample due to dehydration. He was requested to drink some water in order to provide an adequate sample. The claimant tried to drink the water, but felt the urge to throw-up, and discontinued the attempt with the statement he could not do it. The claimant left.

The employer contacted claimant on November 18 and advised he was discharged for refusing to test. In an attempt to save his job, the claimant later provided a doctor's note that confirmed he was dehydrated when examined on November 17.

**REASONING AND CONCLUSIONS OF LAW:**

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 administrative law judge concludes the employer has failed to establish that the claimant was discharged for misconduct in connection with employment on November 18, 2010.

The employer is required to establish the requisites of the Iowa drug testing law in order to show misconduct. The employer failed to provide sufficient evidence to establish that it had reasonable suspicion to test. The employer offered no witness or witness statement that claimant's behavior was erratic due to being under the influence of any drug, and claimant has provided evidence that he was examined and treated for illness at or about the time of testing.

The claimant consented and attempted to test, but his inability to provide a sufficient urine sample was due to dehydration/illness that could not be overcome by the usual testing procedure.

**DECISION:**

The department decision dated December 23, 2010, reference 01, is affirmed. The claimant was not discharged for misconduct on November 18, 2010. Benefits are allowed, provided the claimant is otherwise eligible.

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Randy L. Stephenson  
Administrative Law Judge

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Decision Dated and Mailed

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