

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DARIN M CLYMER**  
Claimant

**APPEAL NO. 10A-UI-04873-VST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**THEISENS INC**  
Employer

**OC: 02/28/10  
Claimant: Appellant (1)**

Section 96.5-2-a – Misconduct

**STATEMENT OF THE CASE:**

Claimant filed an appeal from a decision of a representative dated March 26, 2010, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on May 12, 2010. Claimant participated. Employer participated by Cindy Burdt, director of human resources, and Dawn Prellwitz, store manager Newton. The record consists of the testimony of Cindy Burdt; the testimony of Dawn Prellwitz; and the testimony of Darin Clymer.

**ISSUE:**

Whether the claimant was discharged for misconduct.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer is a retail store operation with seventeen store locations. The claimant worked at the store in Newton, Iowa. The claimant worked in the automotive service area. He was hired on June 5, 2008, as a full time employee. He was terminated on March 2, 2010, for what the employer deemed to be conduct on his part that was not in the best interest of the employer.

The claimant was arrested on February 24, 2010, for OWI and possession of illegal drugs and drug paraphernalia. His arrest was reported in the newspaper. Upon learning this information, the employer decided to place the claimant on unpaid suspension while the drug charges were pending. The claimant met with Dawn Prellwitz on February 25, 2010, so that she could discuss his suspension with him. During that meeting, the claimant admitted that he did have marijuana and drug paraphernalia in his possession. Since the claimant admitted to the possession of drugs, the employer terminated him effective March 2, 2010.

The employer has a drug and alcohol free workplace policy. It conducts pre-employment drug testing. The claimant had received a copy of the employee handbook where that policy is set forth.

### **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.

Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. Violation of a specific work rule, even off-duty, can constitute misconduct. The employer has the burden of proof to show misconduct.

In this case, the employer had a specific policy that prohibited the use and possession of alcohol and illegal drugs in its workplace. Although the claimant was arrested for possession of illegal drugs and drug paraphernalia away from work, the claimant still violated this rule by being in possession of an illegal drug. The claimant admitted to his employer that the drugs and drug paraphernalia were his. The employer has sustained its burden of proof to show misconduct. Benefits are denied.

**DECISION:**

The decision of the representative dated March 26, 2010, reference 01, is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

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Vicki L. Seeck  
Administrative Law Judge

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Decision Dated and Mailed

vls/pjs