

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DAVID R DANIELSEN
Claimant

IOSSI CONSTRUCTION INC
Employer

APPEAL 20A-UI-09705-ED-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/26/20
Claimant: Appellant (1)

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from the August 3, 2020, (reference 01) unemployment insurance decision that denied benefits based upon his separation from employment. The parties were properly notified of the hearing. A telephone hearing was held on September 22, 2020. The claimant, David Danielson, participated and testified. The employer, Iossi Construction Inc., participated through David Iossi.

ISSUE:

Did claimant voluntarily leave the employment with good cause attributable to the employer or did employer discharge the claimant for reasons related to job misconduct sufficient to warrant a denial of benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a carpenter from August 2008, until this employment ended on April 29, 2020, when he was discharged. Claimant's last day worked was April 29, 2020. Claimant's immediate supervisor was Dave Iossi.

On April 29, 2020, claimant was working on a job site. Claimant had a conversation with Mr. Iossi by telephone. Mr. Iossi felt that claimant was acting strange and asked him to come to his office. When claimant arrived, Mr. Iossi noticed signs that claimant was intoxicated including slurred speech and glassy eyes. Mr. Iossi requested claimant be drug tested at Genesis Health. Claimant was tested that day. Genesis Health voluntarily provided test results indicating claimant was impaired due to alcohol intoxication.

The employer had a written policy which included zero tolerance for drugs and alcohol. The policy indicated positive drug and alcohol test would be grounds for immediate termination. Claimant was informed that he was discharged on April 29, 2020. Claimant was informed to

pick up his tools the next day. On April 30, 2020 claimant turned in his keys and picked up his tools.

REASONING AND CONCLUSIONS OF LAW:

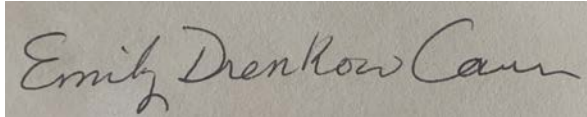
For the reasons that follow, the administrative law judge concludes claimant was discharged for disqualifying job-related misconduct. Benefits are denied.

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 disqualification shall continue 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. Iowa Admin. Code r. 871-24.32(1)(a) provides: 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 of misconduct has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Reigelsberger v. Emp't Appeal Bd.*, 500 N.W.2d 64, 66 (Iowa 1993); accord *Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661, 665 (Iowa 2000).

Further, the employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). Iowa law is very specific about the requirements of a private sector drug-free workplace. See Iowa Code § 730.5. Drug testing may be conducted pursuant to requirements established by an employer's written policy. *Id.* at 730.5(9)(a)(1). The policy must be provided to all employees subject to testing. *Id.* Employers may conduct drug testing in investigating workplace accidents resulting in injury to an employee. *Id.* at 730.5(8)(f). Drug testing must include confirmation of any initial positive test results. *Id.* at 730.5(7)(g). Employers are required to notify an employee of a confirmed positive test result in writing by certified mail, return receipt requested. *Id.* The notice must include the results of the test, the employee's right to request and obtain a confirmatory test and the fee payable by the employee to the employer for reimbursement of expenses concerning the test. *Id.* "The fee charged an employee shall be an amount that represents the costs associated with conducting the second confirmatory test, which shall be consistent with the employer's cost for conducting the initial confirmatory test." *Id.* The employer's drug policy must set forth uniform requirements for what disciplinary actions an employer may take against an employee upon receipt of a confirmed positive test result for drugs. *Id.* at 730.5(9)(b). Upon receipt of a confirmed positive test for drugs which violates the employer's written policy, an employer may use the test result as a basis for disciplinary or rehabilitative action pursuant to its policy and Iowa law, which may include termination of employment. *Id.* at 730.5(7)(g), (10)(a). In this case, employer has a written drug policy which was provided to claimant. Claimant was asked to submit to a drug test after his employer noticed signs of intoxication. Claimant voluntarily submitted to the test at Genesis Health. Employer substantially complied with the statutory requirements in this case. Claimant was discharged for disqualifying job-related misconduct. Benefits are denied.

DECISION:

The August 3, 2020 (reference 01) unemployment insurance decision is affirmed. Claimant was discharged for disqualifying job-related misconduct. Benefits are denied.

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Emily Drenkow Carr
Administrative Law Judge

September 24, 2020
Decision Dated and Mailed

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