

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

**ANNA DEWOLF
120 FRANK ST #2
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**AMERICAN GAMES INC
c/o JOHNSON & ASSOCIATES
PO BOX 6007
OMAHA NE 68106**

**Appeal Number: 05A-UI-04210-ET
OC: 03-27-05 R: 01
Claimant: Appellant (1)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the April 14, 2005, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on May 10, 2005. The claimant participated in the hearing. Leslie Wrinkle-Matheson, Human Resources Manager; Ed Childers, First Shift Supervisor; and Attorney Suzanna Ettrich participated in the hearing on behalf of the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time shrink-wrap operator for American Games from August 10, 1998 to March 21, 2005. On March 21, 2005, two employees approached First Shift

Supervisor Ed Childers and reported that the claimant was acting erratically. After observing the claimant for approximately two hours, he noted that she was not making eye contact when talking to people, was "fidgety" and was displaying "weird body language." Mr. Childers spoke to Human Resources Manager Leslie Wrinkle-Matheson and they both watched the claimant and observed she was acting erratically and jittery and was moving her head from side to side and opening and closing her mouth in an unusual manner. Ms. Wrinkle-Matheson talked to Manager Tom Adams and stated she believed the employer needed to ask the claimant to submit to a drug test. After calling Comp Choice clinic to schedule an appointment the employer met with the claimant in the office and told her it wanted her to take a drug test. The claimant agreed and Ms. Wrinkle-Matheson and Mr. Adams drove the claimant to the clinic. On the way to the clinic the claimant stated she would not pass the test because she used methamphetamine over the weekend. She continued to say she would not pass the test and the employer told her that if she failed the test but agreed to participate in a rehabilitation program she would not lose her job. When the parties arrived at the clinic the claimant completed the required paperwork and went with a nurse to provide a urine sample. She returned a short time later and said she was unable to provide a sample. She remained in the lobby drinking water with Ms. Wrinkle-Matheson and Mr. Adams and then decided she did not want to take the test and left the building. The employer offered her a ride home and the claimant declined. The employer told her that if she refused to take the test it was grounds for termination and the claimant indicated she understood the policy and walked off. The claimant signed the employer's revised drug testing policy in December 2002.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proving disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). After observing the claimant's behavior March 21, 2005, at least four employees believed the claimant was under the influence of drugs and the employer decided she met the criteria for a drug test under the reasonable suspicion standard. While on the way to the clinic the claimant repeatedly stated she would not pass the test and testified during the hearing she had used methamphetamine over the weekend. After initially failing to provide a sample the claimant made the decision to refuse the test, despite the knowledge that under the employer's policy, even if she failed the test, she could retain her job if she went to drug rehabilitation. Although the claimant felt she was not treated fairly by the employer, her testimony did not establish any unlawful or inappropriate action by the employer to support her claim. The claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. Consequently, the administrative law judge concludes the employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Benefits are denied.

DECISION:

The April 14, 2005, reference 01, decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

je/pjs