

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANDREW W STRONG
Claimant

APACHE HOSE & BELTING CO INC
Employer

APPEAL NO: 11A-UI-15202-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 10/30/11
Claimant: Appellant (2)**

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The claimant appealed a department decision dated November 21, 2011, reference 01, that held he was discharged for misconduct on October 26, 2011, and benefits are denied. A telephone hearing was held on December 20, 2011. The claimant participated. The employer did not participate. Claimant Exhibits A & B was received as evidence.

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 witness, and having considered the evidence in the record, finds: The claimant began employment as a full-time belt slitter on September 13, 2010, and last worked for the employer on October 21, 2011. The claimant received an employee handbook that contained the policies of the employer that included drug testing.

The employer confronted claimant with its suspicion of drug use and claimant consented to testing. He tested positive for cocaine but the employer gave him a continuing employment opportunity by having him consent to a drug rehabilitation program. He signed the agreement in order to continue employment though he would have to serve a three-day suspension for October 24, 25 & 26. On October 26, the employer notified claimant he was discharged.

The employer did not respond to the hearing notice. When it received claimant's notice of claim, a human resource representative stated it did not wish to protest or participate.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 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.

The administrative law judge concludes the employer has failed to establish claimant was discharged for misconduct in connection with employment on October 26, 2011. The employer elected not to participate in this matter and offer evidence of job disqualifying misconduct.

DECISION:

The department decision dated November 21, 2011, reference 01, is reversed. The claimant was not discharged for misconduct on October 26, 2011. Benefits are allowed, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

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