

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JAMES J BENISCHEK
Claimant

APPEAL NO. 10A-UI-04062-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SPAHN & ROSE LUMBER CO
Employer

OC: 02/14/10
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the March 9, 2010 (reference 01) decision that denied benefits. After due notice was issued, a telephone conference hearing was held on April 26, 2010. Claimant participated. Employer participated through General Manager Kevin Donahue and Kevin Jacobs.

ISSUE:

The issue is whether claimant was discharged for reasons related to job misconduct sufficient to warrant a denial of benefits.

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant most recently worked full time as a yard worker/truck driver and was separated from employment on February 16, 2010. Claimant reported to work with the smell of alcohol on him at about 1:00 p.m. on February 12, 2010. Donahue asked Supervisor Jacobs if he also smelled alcohol and Jacobs agreed. On June 23, 2009 claimant reported to Donahue that he was too sick to work and Donahue noticed he had a strong smell of alcohol so employer sent him home. He was at work July 13, 2009 and reported to Donahue he was too intoxicated to work so employer told him to leave for the day. On July 14 employer warned him about being intoxicated at work since he drove a truck for the employer.

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 § 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.

Claimant's repeated reporting to work with the smell of alcohol on his breath after having been warned is disqualifying job-related misconduct. Benefits are denied.

DECISION:

The March 9, 2010 (reference 01) decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/css