

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MARY M KORTE
Claimant

HOPE HAVEN INC
Employer

APPEAL 16A-UI-05286-LJ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/10/16
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the April 29, 2016, (reference 01) unemployment insurance decision that denied benefits based upon a determination that claimant was discharged from work for being intoxicated on the job. The parties were properly notified of the hearing. A telephone hearing was held on May 23, 2016. The claimant, Mary Korte, participated. The employer, Hope Haven, Inc., participated through Karen Hirschman, manager of community living services; Natasha Truog, community living supervisor; and Laura Elsenbast, area supervisor. Claimant's Exhibit A was received and admitted into the record without objection.

ISSUE:

Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a lead in Estherville from December 1, 2014, until this employment ended on April 14, 2016, when she was discharged for working while intoxicated.

Claimant reported to the employer's office, on April 12, 2016 around 2:20 p.m.. Claimant then picked up her clients from the site at 2:30 p.m. and transported them to their home in Estherville. After talking with her, the employer's secretary reported that claimant smelled like alcohol. Truog interacted with claimant during this time and confirmed that she smelled alcohol. This was reported to Hirschman. Hirschman and Truog traveled together to Estherville to speak with claimant about this. Hirschman interacted with claimant sometime between 3:00 p.m. and 3:30 p.m. that day. She described claimant's behavior as "addled," and she smelled like alcohol. Additionally, claimant was drinking lots of water and eating chocolate. When questioned, claimant reported to Hirschman that she had stopped drinking by noon that day. The employer then transported claimant to the Estherville hospital to receive a breathalyzer test. Claimant was first tested around 4:00 p.m., and her blood alcohol content measured 0.063.

Claimant was administered a second test approximately 20 minutes later, and her blood alcohol content measured 0.056. Claimant was discharged two days later for violating the employer's prohibition on working while impaired by alcohol and for driving clients while impaired by alcohol.

REASONING AND CONCLUSIONS OF LAW:

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

As an initial matter, claimant argued that the employer should have offered her counseling or other services under the Employee Assistance Program, which would be required under Iowa Code § 730.5. Ordinarily, if claimant's positive alcohol test was solely the result of a random screening or an employer's reasonable suspicion-initiated test, this might be true. However, in this case claimant admitted to consuming alcohol before coming to work. Therefore, this case is properly analyzed as a discharge from employment for disqualifying misconduct, and not as a discharge under Iowa Code § 730.5.

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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

Misconduct must be “substantial” to warrant a denial of job insurance benefits. *Newman v. Iowa Dep’t of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). When based on carelessness, the carelessness must actually indicate a “wrongful intent” to be disqualifying in nature. *Id.* Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer’s interests. *Henry v. Iowa Dep’t of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986).

Here, the employer did not present the receptionist to testify about claimant smelling like alcohol. However, the employer did present Hirschman and Truog, and claimant’s own testimony confirmed that claimant had been drinking earlier in the day. Even if claimant believed that stopping her consumption of alcohol by noon would allow her to work unimpaired by alcohol, the testimony given during the hearing shows claimant was still under the influence of alcohol four hours later. Additionally, the breathalyzer test results indicate claimant was just under the legal driving limit of 0.08 one and one-half hours after she had been driving her clients. Claimant’s conduct constitutes deliberate disregard of her employer’s interest in the safety of its clients and its property, as well as its employees. Benefits must be withheld.

DECISION:

The April 29, 2016, (reference 01) unemployment insurance decision is affirmed. 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.

Elizabeth Johnson
Administrative Law Judge

Decision Dated and Mailed

lj/pjs