

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOHN A CARUSO
Claimant

APPEAL NO. 11A-UI-01363-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SKYLINE CENTER INC
Employer

OC: 01/02/10
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the January 24, 2011 (reference 01) decision that denied benefits. After due notice was issued, a telephone conference hearing was held on March 2, 2011. Claimant participated. Employer participated through human resources director, Lisa Hammond and production team leader, Kim Gooch.

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 fork lift operator from July 2001 and was separated from employment on December 7, 2010. On December 2 he used a fork truck and caused damage. The employer's policy calls for a drug screen upon property damage of \$1,000.00. Claimant received a certified mail copy of the results and was contacted by the MRO. He declined a split sample test because he said it would return the same result.

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.

The employer has met the requirements of Iowa Code § 730.5 because the claimant received a copy of employer's drug and alcohol use policy, he was tested as a result of a workplace accident, the drug screen was positive for marijuana/THC, claimant was notified by certified mail and offered a split screen sample, and he did not request a second test of the split sample. The claimant is required to be drug free in the workplace regardless of employment longevity. The violation of the known work rule constitutes misconduct. Benefits are denied.

DECISION:

The January 24, 2011 (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