

**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**

**THOMAS F CARROLL
1402 – 8TH AVE S
FORT DODGE IA 50501**

**C & S PRODUCTS COMPANY INC
P O BOX 848
FORT DODGE IA 50501**

**C JOSEPH COLEMAN JR
ATTORNEY AT LAW
822 CENTRAL AVE #340
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**Appeal Number: 04A-UI-05735-CT
OC: 04/18/04 R: 01
Claimant: Respondent (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 for Misconduct

STATEMENT OF THE CASE:

C & S Products Company, Inc. filed an appeal from a representative's decision dated May 10, 2004, reference 01, which held that no disqualification would be imposed regarding Thomas Carroll's separation from employment. After due notice was issued, a hearing was held by telephone on June 16, 2004. Mr. Carroll participated personally. The employer participated by Rob Vitzthum, North Plant Superintendent, and Tim O'Toole, Vice President for Operations.

The employer was represented by C. Joseph Coleman, Jr., Attorney at Law. Exhibits Three and Four were admitted on the employer's behalf.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all the evidence in the record, the administrative law judge finds: Mr. Carroll was employed by C & S Products Company, Inc. from March 19, 2001 until April 19, 2004 as a full-time production worker. He was discharged based on an allegation that he was at work under the influence of alcohol in violation of a known company rule on April 19, 2004.

Mr. Carroll had consumed approximately 18 12-ounce beers beginning at noon and ending at 10:30 p.m. on April 18. He reported to work at 6:00 a.m. on April 19. Several coworkers complained that he smelled of alcohol and was irate. At approximately 7:30 a.m., Rob Vitzthum spoke with Mr. Carroll and observed that he smelled of alcohol, had red and glassy eyes and was lethargic. In spite of his observations, he allowed Mr. Carroll to return to his job driving a forklift. Mr. Vitzthum then spoke with Mr. O'Toole who advised him to monitor Mr. Carroll as he worked. Mr. Vitzthum did observe him but did not note that he was having any problems operating his forklift or otherwise performing his job. At approximately 9:00 a.m., Mr. Carroll was notified of his discharge. There was no allegation that he consumed alcohol while at work.

Mr. Carroll had been suspended from work in July of 2001 for being at work under the influence of alcohol. His discharge on April 19, 2004 was due solely to his condition at work on that date.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Carroll was separated from employment for any disqualifying reason. An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct in connection with the employment. The employer had the burden of proving disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). He was discharged for being at work under the influence of alcohol. Given the amount of beer Mr. Carroll had consumed the day prior to April 19, the administrative law judge does not doubt but that he had a hangover on April 19. The question of whether he was "under the influence" of alcohol is a close one. Being

“under the influence” suggests that one’s actions and reactions are effected by alcohol. The administrative law judge is hard-pressed to conclude that Mr. Carroll was under the influence of alcohol given the fact that he was able to successfully perform his job on April 19 without incident. Moreover, the employer allowed him to work operating a forklift for an hour-and-one-half after Mr. Vitzthum first concluded that he was under the influence of alcohol. Observing and monitoring his actions would be of little benefit in the event of an accident. The employer allowed him to continue working while operating a piece of equipment which could have resulted in harm to either Mr. Carroll or others. Therefore, the administrative law judge cannot conclude that the employer seriously considered him a threat to safety at the workplace.

Given the above factors, the administrative law judge has doubt as to whether Mr. Carroll was, in fact, at work under the influence of alcohol on April 19. Inasmuch as the employer had the burden of proof, any doubt will be resolved in Mr. Carroll’s favor. While the employer may have had good cause to discharge, conduct which might warrant a discharge from employment will not necessarily sustain a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa App. 1983). For the reasons stated herein, benefits are allowed.

DECISION:

The representative’s decision dated May 10, 2004, reference 01, is hereby affirmed. Mr. Carroll was discharged but misconduct has not been established. Benefits are allowed, provided he satisfies all other conditions of eligibility.

cfc/