

**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**

**ADAM J STEVENSON  
2507 – 214<sup>ST</sup> N LOT 301  
PORT BYRON IL 61275**

**BLACKHAWK FLEET INC  
2117 STATE ST STE G50  
BETTENDORF IA 52722**

**Appeal Number: 04A-UI-03133-S2T  
OC: 12/21/03 R: 12  
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, 4<sup>th</sup> 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

871 IAC 23.43(9)a – Relief of Charges

STATEMENT OF THE CASE:

Blackhawk Fleet (employer) appealed a representative's March 17, 2004 decision (reference 03) that concluded Adam Stevenson (claimant) was separated from employment and the employer would not be relieved of charges. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 13, 2004. The claimant participated personally. The employer participated by Jerry McCray, Assistant Manager, and Mary Jekel, Manager of Human Resources.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on August 27, 2002, as a full-time deck hand. The claimant received a copy of the employer's drug policy and signed for its receipt on August 27, 2002. The drug policy indicates that persons who are injured at work must submit to alcohol and drug testing.

On April 19, 2003, the claimant was injured at work and sought medical treatment. His superior accompanied him to the medical facility. The superior indicated that the claimant should submit to a breathalyzer test to determine whether the claimant had been under the influence of alcohol at the time of the injury. The claimant submitted to the test. The supervisor told the medical staff and the claimant that no drug testing was warranted. The claimant was not asked to submit to drug testing. He was released to return to work and did so. On April 21, 2003, the employer terminated the claimant for not submitting to drug testing.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant was discharged for misconduct. For the following reasons the administrative law judge concludes he was not.

Iowa Code Section 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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The employer discharged the claimant and has the burden of proof to show misconduct. The employer did not provide any evidence of misconduct at the hearing. Consequently, the employer did not meet its burden of proof to show misconduct. Under Iowa law the claimant has not been discharged for misconduct. Therefore, the employer would not be relieved of charges.

DECISION:

The representative's March 17, 2004 decision (reference 03) is affirmed. The claimant would be eligible to receive unemployment insurance benefits under Iowa Law. Therefore, the employer should not be relieved of charges.

bas/b