

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JOSEPH C DUNCAN**  
Claimant

**APPEAL NO: 12A-UI-07925-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CNH AMERICA LLC**  
Employer

**OC: 05/27/12**  
**Claimant: Appellant (2)**

Iowa Code § 96.5(2)a - Discharge

**PROCEDURAL STATEMENT OF THE CASE:**

The claimant appealed a representative's June 19, 2012 determination (reference 01) that disqualified him from receiving benefits and held the employer's account exempt from charge because he had been discharged for disqualifying reasons. The claimant participated in the hearing with Melissa Garth and Mike Edwards, union representatives. Rachel Taber, the employer's labor relations representative, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is qualified to receive benefits.

**ISSUE:**

Did the employer discharge the claimant for reasons constituting work-connected misconduct?

**FINDINGS OF FACT:**

The claimant started working for the employer in August 2010. He worked as a full-time welder. Prior to May 21, 2012, the employer never suspected the claimant of drinking on the job and his job was not in jeopardy.

The employer gave the union a copy of the employer's drug policy that indicates if the employer has reasonable suspicion a person is intoxicated or has been drinking at work, the employer can ask the employee to take an alcohol test. This consists of going to a local hospital and submitting to a Breathalyzer test. The written policy also states that if an employee refuses to take a requested test he can be disciplined, which can include termination. At the plant where the claimant worked, the employer either allows an employee to continue employment or discharges the employee for refusing a drug test. At another plant location, the employer may give an employee other form of discipline, instead of termination. The claimant did not receive and did not know about the employer's right to ask him to take a drug test.

On May 21, J.H. reported to Taber that he believed the claimant was working under the influence of alcohol. The employer's policy states that two supervisors must assess an employee to determine if the employer has reasonable suspicion to ask an employee to take a drug test. Employees do not know when a supervisor is assessing them for being under the

influence. The supervisors make individual assessments and do not know what anyone has concluded. J.H. reported that the claimant walked normal, his face appeared red and flushed, his speech was normal and he had a faint odor of alcohol. J.H. could not see his eyes because he had on dark glasses, which were required for his job. A second supervisor made the same assessment as J.H. The second supervisor also reported that the claimant had been late for work, and appeared anxious. The last supervisor reported the claimant had a strong odor of alcohol, he covered his mouth when he talked, rambled and appeared anxious.

Based on these three assessments the employer asked the claimant to take a drug test around 1:40 p.m. The claimant's shift ended at 2 p.m. The claimant thought the request was ridiculous and declined to take the requested test.

On May 25, Taber asked the claimant if he refused to take a requested drug test and he acknowledged that he had. When she asked him why, he reported that he wanted to go home and mow his lawn. The employer discharged the claimant on May 29 for drinking at work/refusing to take a drug test.

On May 21, the claimant had mint chew in his mouth. The claimant did not drink at work and did not have any alcoholic beverage at home the night before.

#### **REASONING AND CONCLUSIONS OF LAW:**

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code § 96.5(2)a. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 665 (Iowa 2000).

The law defines misconduct as:

1. A deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment.
2. A deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees. Or
3. An intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer.

Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion do not amount to work-connected misconduct. 871 IAC 24.32(1)(a).

The main problems in this case are: 1 – the claimant did not know about the employer's policy that an employee could be disciplined or discharged if the employee refused to take a requested drug test, and 2 – the employer's written policy is different than the employer's policy at the location where the claimant worked. Taber acknowledged the written policy is given to various plant locations and at the claimant's location an employee either continues employment or is discharged. There is no other disciplinary action taken at the location where the claimant

worked which conflicts with the written policy. The primary problem though is that the claimant did not receive a copy of this policy. As a result, when the employer asked him to take a drug test, he did not know that refusing to take the test would result in his termination. Before a claimant can be disqualified for intentionally violating a policy, he must know about the policy. As a result, without deciding if the employer had reasonable suspicion to request a drug test in the first place, the evidence does not establish that the claimant committed work-connected misconduct because he did not know about the employers' policy. As of May 27, 2012, the claimant is qualified to receive benefits.

**DECISION:**

The representative's June 19, 2012 determination (reference 01) is reversed. The employer discharged the claimant for business reasons, but the claimant did not commit work-connected misconduct because he had not received and did not know the employer would discharge him if he declined to take a drug test the employer asked him to take. As of May 27, 2012, the claimant is qualified to receive benefits, provided he meets all other eligibility requirements. The employer's account is subject to charge.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/pjs