

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

GEORGE JENS  
930 – 15<sup>TH</sup>  
LOT B 11  
FT MADISON IA 52627

RICHERS TRUCKING INC  
1727 – 346<sup>TH</sup> AVE  
WEVER IA 52658-9540

Appeal Number: 05A-UI-03762-ET  
OC: 03-06-05 R: 04  
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.

---

(Administrative Law Judge)

---

(Decision Dated & Mailed)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the March 29, 2005, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on April 29, 2005. The claimant participated in the hearing. Paula Houston, Office Manager; Kent Penrod, Mechanic; Frank Wilbert, Mechanic; and Jim Richers, Owner, participated in the hearing on behalf of the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time wash bay attendant for Richers Trucking from

November 13, 2001 to March 7, 2005. On March 5, 2005, the claimant reported for work and several employees believed he was intoxicated because his speech was slurred, he was stumbling, he smelled of alcohol, his eyes were glassy and he nearly had a fight with another employee. Mechanic Kent Penrod reported the situation to Co-Owner Tim Richers and Mr. Richers took the claimant home. When the claimant reported for work March 7, 2005, the employer terminated his employment for being intoxicated March 5, 2005. The employer did not administer an alcohol test to the claimant.

#### REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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 proving disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Iowa Code Section 730.5 sets forth the rules by which a private company may screen its employees for use of alcohol or illegal drugs.

Although the employer apparently has a drug and alcohol testing policy, it did not follow the procedures set out in its policy or in Iowa Code Section 730.5. The most glaring error made by the employer in this situation is that it failed to administer a test so as to confirm that the claimant was in fact intoxicated. The observations of other employees certainly provided enough evidence for the employer to conduct a test based on reasonable suspicion but the employer's failure to do so deprived the employer of the level of proof needed and deprived the claimant of the rights provided to employees in Iowa Code Section 730.5. Because the employer failed to follow the rules and procedures required by Iowa's drug-testing laws, the administrative law judge is forced to conclude that the employer has not met its burden of proving disqualifying job misconduct as defined by Iowa law and therefore benefits must be allowed.

DECISION:

The March 29, 2005, reference 01, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

je/s