

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

JASON L BACUS
Claimant

DEERE & COMPANY
Employer

APPEAL NO. 17A-UI-03801-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 09/04/17
Claimant: Appellant (1)**

Iowa Code § 96.5-2-a – Discharge for Misconduct
STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated April 3, 2017, reference 02, which held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on May 2, 2017. Claimant participated. Employer participated by Jeff Kennedy. Claimant's exhibit A was admitted into evidence.

ISSUE:

The issue in this matter is whether claimant was discharged for misconduct?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on March 2, 2017. Employer discharged claimant on March 8, 2017 because claimant had appeared to be under the influence of drugs or alcohol while at work on March 2, 2017, and claimant refused to drop a UA when employer believed that there was reasonable suspicion to request the UA. Claimant then did not show for a disciplinary hearing on his actions for which he'd received short notice. As he didn't show for the hearing, he was terminated for the action of refusing to take a requested UA.

Claimant worked as a robotics operator for employer. While on a cigarette break on March 2, 2017 claimant was overheard saying that he hated all the people up front and should kick their teeth in. The janitors who overheard this statement reported it to the labor relations officer. The labor relations officer spoke with the janitors and with a supervisor of the claimant. The officer then met with claimant a few hours later. At that meeting, the labor relations officer determined that claimant had a sketchy memory of what had occurred a couple hours earlier, had glossy eyes, couldn't keep focused on the subject at hand, and had open lesions on his face and neck. The labor relations officer believed that his observations, combined with those of the janitors and the supervisor combined to create a reasonable suspicion that claimant was under the influence of drugs or alcohol. The labor relations officer then requested that claimant do a drug and alcohol testing under the company's reasonable suspicion guidelines. Claimant refused to do the testing stating that he would do an alcohol test, but not a drug test. At that time claimant was suspended pending a hearing to determine whether claimant's job would continue. Claimant was escorted out of the building at that time.

Claimant worked the third shift, and usually got off work around 7am. Claimant stated that his body clock was set for sleeping during the day, and although the scheduled hearing was set for 11am, and then reset at 2pm. Claimant's last night working occurred on March 2, 2017. Claimant's hearing was set on March 8, 2017. Claimant stated that he was still operating under his working hours, and slept from the morning through the afternoon. Claimant was informed by employer and the union representative that he needed to be at work for the hearing regarding his job in the early morning hours of March 8, 2017. Claimant responded to the text from the union official that he wouldn't make the hearing. Employer also left multiple messages with others, who resided with claimant alerting him of the hearing, but claimant didn't respond to those messages and claimant stated he never received the messages. The hearing was held at 2pm in claimant's absence and claimant was found to be in violation of employer's workplace drug use policy by virtue of his refusal to be drug tested when it was reasonably believed claimant had been using drugs.

REASONING AND CONCLUSIONS OF LAW:

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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work connected misconduct. Iowa Code

§ 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982), Iowa Code § 96.5-2-a.

In order to establish misconduct as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. Rule 871 IAC 24.32(1)a; *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445 (Iowa 1979); *Henry v. Iowa Department of Job Service*, 391 N.W.2d 731, 735 (Iowa Ct. App. 1986). The conduct must show a 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 the employee's duties and obligations to the employer. Rule 871 IAC 24.32(1)a; *Huntoon supra*; *Henry supra*.

Iowa Code § 730.5 allows drug testing of an employee if, among other conditions, the employer has "probable cause to believe that an employee's faculties are impaired on the job." Iowa Code section 730.5(8) sets forth the circumstances under which an employer may test employees for the presence of drugs.

The definition of "reasonable suspicion" is found at section 730.5(1)h. The employer acknowledged that there had been observations of claimant at work that would lead to the conclusion that claimant was using drugs. The employer did cite abnormal conduct and erratic behavior while at work.

A report of drug usage from an outside source can form the basis of reasonable suspicion testing. See 730.5(1)h(3). However, the report must come from a reliable and credible source. As such, there is no basis on which to determine if the source was reliable or credible. Here, multiple reliable sources were questioned prior to claimant being asked to do a drug test.

In this matter, the evidence established that claimant was discharged for an act of misconduct when claimant violated employer's policy concerning drug use at work. The last incident, which brought about the discharge, constitutes misconduct because claimant did not accept a drug test and then missed a hearing set up by employer. The administrative law judge holds that claimant was discharged for an act of misconduct and, as such, is disqualified for the receipt of unemployment insurance benefits.

DECISION:

The decision of the representative dated April 3, 2017, reference 02, is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

Blair A. Bennett
Administrative Law Judge

Decision Dated and Mailed

bab/scn