

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRADLEY J GUSTAFSON
Claimant

APPEAL NO. 09A-UI-11642-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

AMSI - IOWA
Employer

OC: 06/28/09
Claimant: Appellant (2)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Bradley Gustafson filed an appeal from a representative's decision dated August 6, 2009, reference 01, which denied benefits based on his separation from AMSI – Iowa. After due notice was issued, a hearing was held by telephone on August 27, 2009. Mr. Gustafson participated personally. The employer did not respond to the notice of hearing.

ISSUE:

At issue in this matter is whether Mr. Gustafson was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Gustafson began working for AMSI – Iowa in August of 2008. He worked full time as a heavy equipment operator. He was not scheduled to work on June 22 and 23, 2009. He was in contact with his supervisor on June 23 and learned at that time that he had been scheduled for a drug screen that morning. He had no prior knowledge of the testing. The supervisor indicated he would get back to Mr. Gustafson but never did. Mr. Gustafson tried calling the supervisor on June 24, to no avail.

REASONING AND CONCLUSIONS OF LAW:

The separation in this matter was initiated by the employer when Mr. Gustafson was not returned to work. Because it was initiated by the employer, it is considered a discharge. An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). It appears that Mr. Gustafson was not returned to work because he failed to appear for a drug screen. However, he had no knowledge of the drug screen until after the fact. Therefore, his failure to appear did not constitute a deliberate and intentional disregard of the employer's standards.

The evidence of record does not establish any other reason for Mr. Gustafson's separation from employment. Inasmuch as misconduct has not been established in relation to the failure to undergo drug testing, no disqualification is imposed.

DECISION:

The representative's decision dated August 6, 2009, reference 01, is hereby reversed. Mr. Gustafson was separated from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/css