

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JOE GLEASON**

Claimant

**APPEAL NO. 10A-UI-05729-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CASEY'S MARKETING COMPANY**

Employer

**Original Claim: 03/14/10**

**Claimant: Appellant (1)**

Iowa Code § 96.5-2-a - Discharge for Misconduct

**STATEMENT OF THE CASE:**

Joe Gleason (claimant) appealed an unemployment insurance decision dated April 13, 2010, reference 01, which held that he was not eligible for unemployment insurance benefits because he was discharged from Casey's Marketing Company (employer) for work-related misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 28, 2010. The claimant participated in the hearing with Attorney Diane Wilson. The employer participated through Sherrie Oelschlager, Area Supervisor, and Mike Meyers, District Manager. Employer's Exhibit One was admitted into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

The issue is whether the employer discharged the claimant for work-related misconduct.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was employed as a part-time cook from March 31, 2009 through February 15, 2010. He was discharged per policy for refusal to take a drug test. The employer's drug policy provides that employees shall not use illegal drugs on the job or report to work under the influence of illegal drugs. Employees will be tested for drugs if there is a reasonable suspicion to believe, based upon specific facts that an employee is using or has used drugs in violation of the employer's policy. Refusal to submit to a reasonable suspicion drug test will result in corrective action up to and including termination. The claimant signed for receipt of the policy on March 31, 2009 and his signature indicated that he read and understood the policy.

A co-worker informed the area supervisor, Sherrie Oelschlager, on February 12, 2010 that he had been asked by the claimant at work if he wanted to go outside and smoke pot. Ms. Oelschlager contacted the district manager, Mike Meyers, and they met the claimant at the store on February 15, 2010. Ms. Oelschlager informed the claimant of the complaint about him and advised him he needed to take a reasonable suspicion drug test. The claimant reported

that he did not smoke pot at work but he used it at his home and would not take a drug test because it would be "dirty." Ms. Oelschlager advised the claimant his refusal to take a drug test resulted in his immediate termination.

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

The issue is whether the employer discharged the claimant for work-connected misconduct. 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.

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.

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.

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 claimant was discharged for violation of the employer's drug and alcohol policy based on his refusal to submit to a drug test based on reasonable suspicion. He acknowledged that he received, read, and understood the employer's written drug policy. The claimant's refusal to submit to a drug test in accordance with the employer's drug policy amounts to an intentional and substantial disregard of the employer's interests. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

**DECISION:**

The unemployment insurance decision dated April 13, 2010, reference 01, is affirmed. The claimant is not eligible to receive unemployment insurance benefits, because he was discharged from work for misconduct. Benefits are withheld until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

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Susan D. Ackerman  
Administrative Law Judge

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Decision Dated and Mailed

sda/kjw