

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CRAIG A GARDNER
Claimant

APPEAL NO. 13A-UI-13457-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

OC: 11/10/13
Claimant: Appellant (1)

Iowa Code § 96.5(2)a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the December 4, 2013, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on December 31, 2013. The claimant did participate. The employer did not participate. Employer's Exhibit One was entered and received into the record.

ISSUE:

Was the claimant discharged due to job connected misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a meat sorter full-time beginning February 14, 2008 through November 12, 2013 when he was discharged. In 2009 the claimant was found to have alcohol in his system while at work. His alcohol use was confirmed by a breathalyzer. He was placed on probation. He was warned at that time that any future incidents of alcohol in his system would lead to his discharge. He was given a copy of the employer's drug and alcohol policy which clearly put him on notice that he was required to be alcohol free while at work. It is not unreasonable for an employer to expect employees to be alcohol free while at work.

On November 11, 2013 when the claimant arrived at work at 2:00 p.m. two separate management employees noted that the claimant had alcohol on his breath. Based upon their observations of the claimant he was given two breathalyzer tests fifteen minutes apart. The claimant admitted that he had been drinking the night before and had probably stopped drinking about 6:00 a.m. His first breathalyzer was a .063 and the second was .054. The claimant had alcohol in his system because he did not stop drinking soon enough before returning to work. The claimant was discharged as it was his second violation of the employer's drug and alcohol policy.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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.

The employer has met the requirements of Iowa Code § 730.5 because the claimant received a copy of employer's drug and alcohol use policy, he was tested as a result of reasonable suspicion incident when two managers smelled alcohol on his breath. He admitted he had been drinking prior to reporting for work. This was his second positive alcohol test while employed and he was discharged. The employer complied with the drug and alcohol testing laws. The claimant is required to be alcohol free in the workplace. The violation of the known work rule for a second time constitutes misconduct. Benefits are denied.

DECISION:

The December 4, 2013, reference 01, decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/pjs