

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

STEPHEN L FENNER
Claimant

APPEAL NO. 10A-UI-12241-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DOUGLAS INDUSTRIES INC
Employer

OC: 08/01/10
Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated August 26, 2010, reference 01, that concluded he was discharged for work-connected misconduct. A telephone hearing was held on November 17, 2010. The parties were properly notified about the hearing. The claimant participated in the hearing. Matthew Schwartz participated in the hearing on behalf of the employer with a witness, Michael Ploen.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked for the employer as a welder from July 9, 2008, to August 3, 2010. He was informed and understood that under the employer's work rules, employees were prohibited from consuming alcohol on company premises.

On July 31, 2010, the claimant worked from about 4:45 to 8:45 a.m. At some point while he was at work that morning, the claimant drank some beer at work. Later that morning, after he left work, he drove his car into a ditch. The state patrol officer came to the scene and determined the claimant was under the influence of alcohol and arrested him for operating a vehicle while intoxicated (OWI). Since the claimant reported that he had been at work that morning, the officer notified the employer that the claimant had been arrested for OWI and had reported he was coming from work. On Monday, August 2, a supervisor discovered a partially consumed can of beer at the claimant's work station. When the supervisor confronted the claimant about this, he responded "I can assure you that I did not drink it while I was on the clock." The employer discharged the claimant on August 3 for violating the employer's work rule prohibiting consuming alcohol on company premises.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code section 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. A preponderance of the evidence establishes the claimant consumed alcohol on company premises.

The claimant's violation of a known work rule was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. Work-connected misconduct as defined by the unemployment insurance law has been established in this case.

DECISION:

The unemployment insurance decision dated August 26, 2010, reference 01, is affirmed. The claimant is disqualified from receiving unemployment insurance benefits until he has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs