

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DREW ARMENTROUT
Claimant

APPEAL NO. 13A-UI-07943-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TAYLOR OIL CO INC
Employer

OC: 06/09/13
Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Claimant filed a timely appeal from a representative's decision dated June 28, 2013, reference 01, which denied unemployment insurance benefits. After due notice was provided, a telephone hearing was held on August 13, 2013. Claimant participated. The employer participated by Mr. Eric Taylor, Company Supervisor. Employer's Exhibits A and B were received into evidence.

ISSUE:

The issue is whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

Drew Armentrout was employed by Taylor Oil Company, Inc. at its facility in Harlan, Iowa from April 23, 2012 until June 12, 2013 when he was discharged from employment. Mr. Armentrout had initially been hired as a part-time clerk but had been promoted to the position of full-time store manager approximately one month after being hired by the company.

Mr. Armentrout was discharged on June 12, 2013 after the company determined that the claimant had not opened the company store in Harlan, Iowa on the morning of June 11, 2013 and had not provided any notice of information to the employer about his failure to do so. After being alerted that the store had not opened by other employees and patrons, Mr. Taylor traveled to the Harlan, Iowa facility. While there during the day other employees informed the employer that Mr. Armentrout had at times closed the store and left early without notifying company management and reported that Mr. Armentrout often smelled of alcohol at work.

On June 12, Mr. Armentrout was directed to meet with Mr. Taylor. The employer found the claimant's explanation of why he had not opened the store or provided notice to company management to be unacceptable and the claimant was discharged from employment.

The claimant had not reported for work on June 11 because his normal babysitter was not available due to a death in her family. Although the claimant had gone to the facility early that

morning with his nine-year-old daughter to place a sign on the door, the claimant did not remain although the employer had indicated to Mr. Armentrout in the past that his daughter's presence at the store was not an issue. Mr. Armentrout maintains that he believed that the employer would have no objection to him smelling of alcohol at times as he had been called into work by his employer at times in the past although he had told the employer that he had consumed alcohol before being called in.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes the claimant was discharged under disqualifying conditions. It does.

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.

871 IAC 24.32(7) provides:

(7) Excessive unexcused absenteeism. Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer.

The employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment insurance benefits. The focus is on deliberate, intentional or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. of Appeals 1992).

The evidence in the record establishes the claimant was discharged based upon his failure to open the store that he was managing on June 11, 2013 and his failure to provide reasonable and timely notice to his employer of any issues that would prevent the store from being opened as scheduled. After the employer had arrived at the store after being alerted that it had not been opened by patrons, the employer determined that Mr. Armentrout had recently been in the habit of leaving early or leaving the store without notifying the employer as required and that the claimant had often smelled of alcohol while performing his duties. The employer had given the claimant limited authorization to report for work after consuming alcohol on a limited number of specific occasions but had not provided the claimant any authorization to regularly report with the smell of alcohol or to leave without authorization by the employer. The claimant's failure to open the store or provide reasonable and timely notification to the employer on June 11, 2013 constituted misconduct in connection with the work. Unemployment insurance benefits are withheld.

DECISION:

The representative's decision dated June 28, 2013, reference 01, is affirmed. The claimant was discharged under disqualifying conditions. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount and is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs