

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JEFFREY L SCHAEFER
Claimant

APPEAL NO. 07A-UI-01272-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

**OC: 12/24/06 R: 01
Claimant: Respondent (2)**

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated January 26, 2007, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on February 20, 2007. The parties were properly notified about the hearing. The claimant failed to participated in the hearing. Hal Edrington participated in the hearing on behalf of the employer.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked for the employer from April 20, 2006, to September 19, 2006. The claimant was informed and understood that under the employer's work rules, employees were required to submit to alcohol testing under certain circumstances, including when an employee is reasonably believed to be under the influence of alcohol, and were subject to termination if they tested positive for alcohol. The claimant tested positive for alcohol on August 2, 2006, and was given the option to undergo treatment or self-rehabilitation or be terminated. He was warned that if again tested positive for alcohol, he would be terminated. The claimant choose self-rehabilitation.

Pursuant to the policy, the claimant was required to submit to an alcohol test on September 19, 2006, because supervisors reasonably believed he was under the influence of alcohol based on his eyes being bloodshot, his speech was slurred, and he was unsteady on his feet. A breath sample was properly taken from the claimant and properly analyzed using a calibrated breath-alcohol by a trained operator. The analysis disclosed the presence of alcohol in the claimant's system at a level that exceeded the limit established in the employer's policy. A second test was done after waiting a period of time and also exceeded the limit established in the employer's policy.

The employer discharged the claimant on September 19, 2006, for testing positive for alcohol a second time, in violation of the employer's policy and the warning he had received in August 2006.

The claimant filed a new claim for unemployment insurance benefits with an effective date of December 24, 2006. The employer was the claimant's last employer at the time he filed for benefits. The claimant filed for and received a total of \$1,192.00 in unemployment insurance benefits for the weeks between December 24, 2006, and February 17, 2007.

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.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The Iowa Supreme Court has ruled that an employer cannot establish disqualifying misconduct based on a drug or alcohol test performed in violation of Iowa's drug testing laws. Harrison v. Employment Appeal Board, 659 N.W.2d 581 (Iowa 2003); Eaton v. Employment Appeal Board,

602 N.W.2d 553, 558 (Iowa 1999). As the court in *Eaton* stated, "It would be contrary to the spirit of chapter 730 to allow an employer to benefit from an unauthorized drug test by relying on it as a basis to disqualify an employee from unemployment compensation benefits." *Eaton*, 602 N.W.2d at 558.

The next issue in this case is whether the claimant was overpaid unemployment insurance benefits.

The evidence establishes that the alcohol testing conduct of the claimant complied with Iowa law. 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.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

As a result of this decision, the claimant is disqualified from receiving unemployment insurance benefits and was overpaid \$1,192.00 in benefits for the weeks between December 24, 2006, and February 17, 2007.

DECISION:

The unemployment insurance decision dated January 26, 2007, reference 01, is reversed. 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 qualified.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/css