

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**ROLANDO A MENDOZA**  
Claimant

**APPEAL 21A-UI-15202-CS-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SEABOARD TRIUMPH FOODS LLC**  
Employer

**OC: 08/09/20  
Claimant: Appellant (1)**

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Iowa Code §96.5(2)a-Discharge/Misconduct  
Iowa Code §96.5(1)- Voluntary Quit

**STATEMENT OF THE CASE:**

On July 6, 2021, the claimant/appellant filed an appeal from the July 2, 2021, (reference 04) unemployment insurance decision that denied benefits based on claimant being discharged for violation of a known rule. The parties were properly notified about the hearing. A telephone hearing was held on August 27, 2021. Claimant personally participated at the hearing. Employer participated through Human Resources Supervisor, James Nelson. Administrative notice was taken of claimant's unemployment benefits records

**ISSUE:**

Was the separation a discharge for job-related misconduct that disqualifies him from state unemployment benefits?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on April 30, 2018. Claimant last worked as a full-time production line worker. Claimant was separated from employment on April 20, 2021, when he was discharged by the employer.

On April 20, 2021, claimant arrived at work late. Around 10:00 a.m., human resources, Christina Scott, called claimant into her office to ask claimant why he was late for work. During this time Ms. Scott smelt what she believed to be marijuana and left her office to obtain safety personnel. Ms. Scott had a reasonable suspicion that the claimant was on drugs based on her observing a smell that resembled marijuana. Ms. Scott informed claimant that she would be requiring him to submit to a urine analysis drug test. The employer has a health services on the premises. Ms. Scott and the safety personnel escorted claimant to health services for his drug test and claimant arrived at health services around 10:20-10:30 a.m.

While in health services claimant filled out the paperwork and then told Ms. Scott that he needed to leave at 11:00 a.m. because he had an appointment in Omaha. The claimant did not think he had enough time to complete the urine analysis so the claimant offered to take the drug test the

next day due to him needing to leave. Ms. Scott told claimant that if he did not submit the sample then he would be deemed a refusal and he would be terminated. Claimant told Ms. Scott and Jeff, the safety personnel, that he was leaving because he had to get to his appointment in Omaha. Ms. Scott and Jeff escorted claimant out of the building and took his timecard. Claimant was terminated for failing to submit to a drug test.

On April 30, 2018, claimant received the employer's handbook. The employer's drug testing policy is in the employee handbook. The employer did not provide a copy of the drug testing policy as an exhibit for this hearing. The employer testified the written policy states that a refusal to take a drug test is an automatic termination. The employer's policy also has a second chance policy where if a claimant agrees to attend rehabilitation and they are clean for 30 days, then the employee can return as long as they agree to submit to random drug testing throughout the year. The employer also has an awareness program that discusses the dangers of drug and alcohol abuse.

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

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for job-related misconduct. Benefits are denied.

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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

Iowa Admin. Code r. 871-24.32(4) provides:

(4) Report required. The claimant's statement and employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

Iowa Admin. Code r.871-24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). In an at-will employment environment an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, it incurs potential liability for unemployment insurance benefits related to that separation. The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984).

What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). The focus of the administrative code definition of misconduct is on deliberate, intentional or culpable acts by the employee. *Id.* When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986).

Iowa Code section 730.5 specifically addresses private sector drug-free workplaces and what is required of employers regarding drug testing in the workplace. Iowa Code section 730.5(6) states that drug or alcohol testing of employees conducted by an employer shall normally occur during, or immediately before or after, a regular work period. The time required for such testing by an employer shall be deemed work time for the purposes of compensation and benefits for employees.

Claimant was asked to submit to drug testing based on reasonable suspicion. The employer testified two employees smelled the odor of marijuana which was the basis for the reasonable suspicion. The claimant testified that he arrived at the health center between 10:20-10:30 a.m., however, the claimant believed that 30-40 minutes was not enough time for him to submit a urine analysis test since he needed to leave for an appointment in Omaha. The claimant's failure to submit a sample when asked by the employer during his regular work period is deemed a refusal to test. Claimant denies that he knew about the employer's drug policy but he acknowledges that

he received the employee handbook which contains the policy. The employer testified they have a signed acknowledgement by the claimant acknowledging that he received the handbook containing the drug policy on April 30, 2018. The policy states that an employee is subject to discharge should they refuse to submit to testing when asked to do so. Claimant's violation of this known work rule constitutes misconduct.

Accordingly, the employer has met its burden of proof in establishing that the claimant's conduct consisted of deliberate acts that constituted an intentional and substantial disregard of the employer's interests. These actions rise to the level of willful misconduct. As such, benefits are denied.

**DECISION:**

The July 2, 2021 (reference 04) unemployment insurance decision is affirmed. Claimant was discharged from employment for job-related misconduct. Benefits are denied until such time as claimant has worked in and has been paid wages for insured work equal to ten times his weekly benefits amount, provided he is otherwise eligible.



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Carly Smith  
Administrative Law Judge  
Unemployment Insurance Appeals Bureau

September 3, 2021  
Decision Dated and Mailed

cs/mh

**NOTE TO CLAIMANT:**

- This decision determines you are not eligible for regular unemployment insurance benefits under state law. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision.