

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

**STEVE R SADLER
131 N 8TH ST APT #26
FORT DODGE IA 50501**

**AMERICOLD LOGISTICS LLC
C/o ADP UNEMPLOYMENT GROUP
UC EXPRESS
PO BOX 66744
ST LOUIS MO 63166-6744**

**Appeal Number: 05A-UI-06663-RT
OC: 06/05/05 R: 01
Claimant: Appellant (1)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant, Steve R. Sadler, filed a timely appeal from an unemployment insurance decision dated June 21, 2005, reference 01, denying unemployment insurance benefits to him. After due notice was issued, a telephone hearing was held on July 14, 2005, with the claimant participating. Jodi Cain, Administrative Manager, participated in the hearing for the employer, Americold Logistics LLC. The administrative law judge takes official notice of Iowa Workforce Development Department unemployment insurance records for the claimant.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: The claimant was employed by the employer as a full-time dock laborer from February 28, 2005, until he was discharged on May 16, 2005. The claimant was not employed otherwise or previously by the employer. The claimant was employed by the employer for less than three months. The claimant had been a temporary employee working for a temporary employment agency for approximately two months before he was hired as a full-time regular employee on February 28, 2005. The claimant was discharged for coming to work on May 16, 2005, intoxicated and failing an alcohol test under the employer's alcohol and drug testing policy, both of which call for discharge pursuant to the employer's policies. The employer has a written drug and alcohol testing policy, a copy of which the claimant received and for which he signed an acknowledgment, providing for alcohol testing for pre-employment, post-accident, upon return of extended leave of absence, and reasonable suspicion. The policy provides for alcohol testing either by urine, or blood, or breath.

On May 16, 2005, the claimant came to work and clocked in at 6:57 a.m. The employer's witness, who was not at work at that time, Jodi Cain, Administrative Manager, received a phone call from another manager, Al Harwick. Mr. Harwick told Ms. Cain that the claimant was smelling of alcohol and slurring his words and appeared to be under the effects of alcohol. Ms. Cain asked Mr. Harwick to confer with another manager, which he did by and through Dale Scherff, who observed the same symptoms and made the same determination. Ms. Cain then told Mr. Harwick to take the claimant to Trimark Clinic, a health care clinic and hospital, for an alcohol test. Mr. Harwick took the claimant to Trimark Clinic, and two breathalyzer tests were performed. The first test at 7:48 a.m. showed a blood alcohol content of .097 grams of alcohol per 200 liters of breath, and at 8:09 a.m., again, .097 grams of alcohol per 200 liters of breath. The claimant was then notified by written confirmation from the Trimark Clinic and its lab at that time of these results. Mr. Harwick received an appropriate chain of custody and the results of the breathalyzer tests and returned with the claimant to work at approximately 8:30 a.m. At that time Ms. Cain was at work and observed the claimant and still noted that he was slurring his speech and smelling of alcohol. Ms. Cain had previously observed other individuals who had been drinking and intoxicated and noted that the claimant displayed the same symptoms as did those individuals. Ms. Cain informed the claimant of the results and told him that he was intoxicated at work. The claimant informed Ms. Cain that he had been up too late drinking, until the early morning hours, and should not have come to work. The claimant was then discharged.

REASONING AND CONCLUSIONS OF LAW:

The question presented by this appeal is whether the claimant's separation from employment was a disqualifying event. It was.

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 parties agree, and the administrative law judge concludes, that the claimant was discharged on May 16, 2005. In order to be disqualified to receive unemployment insurance benefits pursuant to a discharge, the claimant must have been discharged for disqualifying misconduct. The administrative law judge concludes that the employer has met its burden of proof to demonstrate by a preponderance of the evidence that the claimant was discharged for disqualifying misconduct. There were two reasons for the claimant's discharge: coming to work intoxicated and failing an alcohol test under the employer's alcohol testing policy.

Concerning the claimant's coming to work intoxicated, the evidence establishes that the claimant punched in on a time clock at 6:57 a.m. The evidence further establishes that the claimant was intoxicated at the time. The employer's witness, Jodi Cain, Administrative Manager, credibly testified that she personally observed the claimant at approximately 8:30 a.m. and noted that he was slurring his speech and smelled of alcohol, and these were the same characteristics that she had previously observed on other intoxicated people. Ms. Cain also credibly testified that two other managers also characterized the claimant as intoxicated based upon these and similar characteristics. The claimant informed Ms. Cain on May 16, 2005, when she confronted him about his condition, that he had been up late drinking into the early morning hours of May 16, 2005, and that he should not have come to work. The claimant now testifies that he did not remember saying that, but admits he drank at least until 1:00 a.m. The administrative law judge further notes that the claimant clocked in less than six hours later. The claimant testified that he really wasn't at work because he clocked out at approximately 7:00 a.m. Ms. Cain credibly testified that employer records do not show this, but even assuming that the claimant had clocked out at 7:00 a.m., he was at work for a period

of time and was intoxicated, and this is in violation of the employer's rules. The administrative law judge concludes that coming to work intoxicated is a deliberate act or omission constituting a material breach of his duties and obligations arising out of his worker's contract of employment and evinces a willful or wanton disregard of the employer's interests and is disqualifying misconduct irrespective of the results of the alcohol test.

Concerning the alcohol tests, the evidence establishes that the claimant failed two breathalyzer tests on May 16, 2005, showing blood alcohol content of .097 grams of alcohol per 200 liters of breath. The employer has a zero tolerance for alcohol. The administrative law judge notes that these percentages exceed the standard for alcohol concentration minimum in Iowa Code section 730.5(9)(e). The administrative law judge further concludes that the employer has a written alcohol policy providing for alcohol testing for employees when the employer has a reasonable suspicion, and this complies with Iowa Code section 730.5(8)(c). The administrative law judge also concludes that the employer had, at the very least, reasonable suspicion for such an alcohol test for the reasons set out above. The test administered was two breathalyzer tests done per the employer's policy. The tests were administered at a medical health center, Trimark Clinic. The claimant was then discharged for the positive alcohol tests. It is true that the claimant was not notified of the positive test by return receipt requested, nor did the notification contain other matters required for drug testing. However, Iowa Code section 730.5(7)(f), (2) provides "notwithstanding any provision of this section to the contrary, alcohol testing, including initial and confirmatory testing, may be conducted pursuant to requirements established by the employer's written policy. The written policy shall include requirements governing evidential breath testing devices, alcohol screening devices, and the qualifications of the personnel administering initial and confirmatory testing..." The administrative law judge specifically notes that that subsection refers to the word "section," which is 730.5, and does not refer to subsections. The employer's policies meet these requirements, including a breathalyzer test performed at a medical facility, Trimark Clinic. Accordingly, the administrative law judge concludes that the alcohol test administered to the claimant is valid despite its failures to comply with other provisions in Iowa Code section 730.5 that apply to drug testing. The administrative law judge notes, without deciding that compliance is necessary, that the claimant did not work for the employer 12 months out of the last 18 months so as to be entitled to rehabilitation under Iowa Code section 730.5(9)(g). Therefore, the administrative law judge concludes that the claimant's alcohol test is valid and it the positive result violates the employer's alcohol testing policy, a copy of which the claimant received and for which he signed an acknowledge and, as a consequence, this failure is also disqualifying misconduct.

In summary, and for all the reasons set out above, the administrative law judge concludes that the claimant came to work intoxicated and failed an alcohol test and both occurrences are disqualifying misconduct. Therefore, the administrative law judge concludes that the claimant was discharged for disqualifying misconduct and, as a consequence, he is disqualified to receive unemployment insurance benefits. Unemployment insurance benefits are denied to the claimant until or unless he requalifies for such benefits.

DECISION:

The representative's decision of June 21, 2005, reference 01, is affirmed. The claimant, Steve R. Sadler, is not entitled to receive unemployment insurance benefits, until or unless he requalifies for such benefits, because he was discharged for disqualifying misconduct.

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