

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**BRITT HELLEMS**  
Claimant

**JENSEN BUILDERS LTD**  
Employer

**APPEAL 19A-UI-08417-SC-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 10/06/19**  
**Claimant: Appellant (1)**

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Iowa Code § 96.5(2)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

On October 28, 2019, Britt Hellems (claimant) filed an appeal from the October 24, 2019, reference 01, unemployment insurance decision that denied benefits based upon the determination Jensen Builders, LTD (employer) discharged him for violation of a known company rule. The parties were properly notified about the hearing. A telephone hearing was held on November 18, 2019. The claimant participated personally. The employer did not respond to the hearing notice and did not participate. No exhibits were offered into the record.

**ISSUE:**

Was the claimant discharged for disqualifying job-related misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full-time as a Laborer beginning on May 20, 2019, and was separated from employment on September 26, 2019, when he was discharged. The employer has a drug and alcohol testing policy that allows testing of employees following a workplace accident. The policy also states an employee's refusal to take the tests will result in termination of their employment. The claimant received a copy of the employer's policy.

On September 25 at approximately 3:00 p.m., the claimant was moving heavy forms and pulled a muscle. He notified his significant other about it at home and she scheduled an appointment for the following evening with his doctor. The next day at work, the claimant reported the pulled muscle to his supervisor who notified the office manager. The office manager took the claimant to a clinic at 9:30 a.m. for treatment and for drug and alcohol screening pursuant to the policy. The claimant refused to submit to the drug and alcohol tests and the medical treatment from the doctor present because he did not feel comfortable with the clinic. The office manager told the claimant that he was discharged for refusing the drug and alcohol tests. The claimant saw his personal doctor later that evening, but did not ask the doctor to test him for drugs or alcohol.

## REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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).

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). 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). Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). 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). Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990).

Private Iowa employers are allowed to drug test employees in accordance with Iowa Code section 730.5. Employers are required to maintain a written policy and distribute it to their employees. They are allowed to test employees under certain circumstances including, but not limited to, following a workplace accident resulting in injury. Employers are also allowed to discipline employees up to and including termination for refusal to take a drug test.

In this case, the employer has maintained a drug testing policy that allows for testing following an accident resulting in injury. The claimant was performing work for the employer, something happened while he was moving the form, and he was injured as a result. The injury was reported to the employer who asked him to take a drug and alcohol test. The claimant refused the testing and knew that refusing to participate in the tests could result in the end of his employment. The claimant has not provided a good cause for refusing to follow the employer's reasonable direction. The claimant engaged in willful and deliberate misconduct. Accordingly, benefits are denied.

**DECISION:**

The October 24, 2019, reference 01, unemployment insurance decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

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Stephanie R. Callahan  
Administrative Law Judge

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Decision Dated and Mailed

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