

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

NIC J SCHROEDER

Claimant

CASEY'S MARKETING CO

Employer

APPEAL 15A-UI-00940-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 12/28/14

Claimant: Respondent (2-R)

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

STATEMENT OF THE CASE:

The employer filed an appeal from the January 14, 2015, (reference 01) unemployment insurance decision that allowed benefits based upon a discharge from employment. The parties were properly notified about the hearing. A telephone hearing was held on February 12, 2015. Claimant participated. Employer participated through manager Marlys Reisner and assistant manager Leslie Carber.

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: Claimant was employed full-time as a kitchen cook and delivery driver from July 7, 2014, and was separated from employment on December 31, 2014, when he was discharged. On December 18 claimant's arm was injured by hot oil splattering from the deep fryer. Carber told him to put mustard on it but did not send him to the emergency room and he had no health insurance so self-treated. Riesner found out about the burn a week later and Carber was worried because she had not completed an accident report. On December 30 claimant reported to work ill. He had been taking Mucinex since he was coughing and congested. He cut himself in the kitchen while opening a mushroom can for a coworker. He attempted to treat the wound himself. Carber went into kitchen and asked him how he was doing and said he would probably have to go to the hospital. He told her he would not pass a urine test. A short time later he went to the office and Reisner told him this accident would be handled "by the book" and he needed to go to the hospital for treatment. Claimant balked, pulled Reisner aside and spoke to her quietly telling her he did not want to go because he would not pass a "piss test" and that she knows he "smokes." Reisner sent him anyway but did not order a drug screen because of the length of time that request takes to go through human resources. Claimant went to the hospital, was treated and released to work a short time later. When he returned Carber completed an accident report. The next day Reisner discharged him because he admitted he would not have been able to pass a drug screen.

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.

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).

While the parties disputed whether or not claimant told Riesner and Carber he would fail a urinalysis drug screen, claimant's attempt to explain it away by saying he was afraid of needles is not credible. His admission to Riesner and Carber that he did not want to go to the hospital to get treatment for his work injury because he "smokes" and would not pass a "piss test" indicates he was in deliberate violation of the known policy that employees are required to be drug free in the workplace. This is deliberate misconduct, even without prior warning.

DECISION:

The January 14, 2015, (reference 01) unemployment insurance decision is reversed. 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.

REMAND:

Since the hearing notice is deficient, the overpayment and fact-finding participation issues are remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/pjs