

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DAN E RENDER**

Claimant

**APPEAL NO. 10A-UI-16806-LT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**NAPA AUTO PARTS  
GENUINE PARTS COMPANY**  
Employer

**OC: 10/24/10  
Claimant: Appellant (2)**

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

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the December 9, 2010 (reference 01) decision that denied benefits. After due notice was issued, a telephone conference hearing was held on January 25, 2011. Claimant participated and was represented by Katie Naset, Attorney at Law. Employer participated through Carolyn Miller and Rich Humphrey. Claimant's Exhibits A through D were admitted to the record.

**ISSUE:**

The issue is whether claimant was discharged for reasons related to job misconduct sufficient to warrant a denial of benefits.

**FINDINGS OF FACT:**

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant most recently worked full-time as a stock room worker from 1997 and was separated from employment on November 10, 2010. His last day of work was October 25, 2010. He was sent to a testing facility for a random drug test, he was there for three hours and drank 40 ounces of fluids, but was unable to give a sample despite trying three times as directed. Employer suspended him on that date. He went to his physician on October 26, 2010 who wrote a note saying claimant has a prostate condition that causes "urinary retention". (Claimant's Exhibit A) The employer sent the note to the MRO who considered it a refusal to test but gave no specific reasons for the opinion. Claimant had been tested before without a problem but also had urinary retention issues before as well. Employer discharged him and did not allow a second opportunity for testing.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason.

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.

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.

Inasmuch as claimant provided a reasonable explanation from his treating physician about why he could not produce a urine sample after trying three times, at the direction of the testing official, and employer has not rebutted the medical information except to say that the MRO still considered it a refusal to test, no evidence of a deliberate refusal to test or misconduct have been established. Benefits are allowed.

**DECISION:**

The December 9, 2010 (reference 01) decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed. The benefits withheld shall be paid, provided the claimant is otherwise eligible.

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Dévon M. Lewis  
Administrative Law Judge

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Decision Dated and Mailed

dml/pjs