

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**GARY M BUCKINGHAM**

Claimant

**APPEAL NO. 14A-UI-00249-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CLEANING CONNECTION INC**

Employer

**OC: 06/09/13**

**Claimant: Appellant (1)**

Section 96.5(2)a – Discharge

**STATEMENT OF THE CASE:**

The claimant, Gary Buckingham, filed an appeal from a decision dated January 6, 2014, reference 03. The decision disqualified him from receiving unemployment benefits. After due notice was issued a hearing was held by telephone conference call on January 30, 2014. The claimant participated on his own behalf. The employer, Cleaning Connection, participated by President Todd Mendenhall, Operations Manager Pam Klemz, and Night Supervisor Lance Bohall.

**ISSUE:**

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

**FINDINGS OF FACT:**

Gary Buckingham was employed by Cleaning Connection from August 28, 2013 until December 12, 2013 as a full-time sales representative. On September 6 and 20, 2013, Night Supervisor Lance Bohall reported to Operations Manager Pam Klemz he had seen Mr. Buckingham in a local restaurant consuming what he thought was alcohol. On the second occasion he was also unsteady on his feet. Ms. Klemz reported this to President Todd Mendenhall but he did nothing because he felt more specific information was needed.

On November 6, 2013, Mr. Mendenhall received a call from a personal friend who had seen the claimant drinking in a bar around 4:00 p.m. The employer called Mr. Buckingham who asserted he had been drinking but it was after his work day was over. The employer reminded him of the company policy which specifically states no alcohol is to be consumed during work hours.

On December 11, 2013, Ms. Klemz met the claimant at a potential customer and she immediately smelled alcohol on his breath. He said he had just come from a local bar. She did not want him talking to the potential customer for fear someone else would smell alcohol on his breath. After the meeting she called Mr. Mendenhall who contacted Mr. Buckingham.

The claimant admitted he had been drinking at El Rodeo, a local restaurant. The next day the employer notified him he was fired. Afterward the claimant maintained the margarita he had been drinking was “non alcoholic” but could not explain why he did not make this known to the employer the day before when he was first questioned. After the discharge he did text Mr. Mendenhall and said, in part he wanted a second chance and “it would not happen again.”

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

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.

The employer has presented firsthand testimony from eye witnesses about the claimant drinking during work hours. Sufficient evidence has also been presented to establish the drinks were alcoholic. Mr. Buckingham asserted the drink he had consumed on December 11, 2013, was non-alcoholic but could provide no reasonable explanation for not immediately telling the employer this at the time he was questioned. His credibility is further impaired by his statement “it won’t happen again” when he was asking for a “second chance” after the separation.

The administrative law judge concludes the claimant was consuming alcohol during work hours in violation of a known policy. This is conduct not in the best interests of the employer as the claimant was driving a company vehicle, interacting with customers, and otherwise jeopardizing not only the business relations with customers but the safety of the claimant and others on the public roadways. This is misconduct and the claimant is disqualified.

**DECISION:**

The unemployment insurance decision dated January 6, 2014, reference 03, is affirmed. Gary Buckingham is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount in insured work, provided he is otherwise eligible.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

bgh/pjs