

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MARK H HOLLY**  
Claimant

**APPEAL NO. 07A-UI-08365-H2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**AGRIPROCESSORS INC**  
Employer

**OC: 07-29-07 R: 04  
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the August 28, 2007, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on September 25, 2007. The claimant did participate. The employer did participate through Elizabeth Billmeyer, Human Resources Manager.

**ISSUE:**

Was the claimant discharged for work-related misconduct?

**FINDINGS OF FACT:**

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was employed as a maintenance technician full time beginning January 30, 2007 through July 13, 2007 when he was discharged.

The claimant slipped on some stairs at work on July 9, 2007 and was immediately sent for medical treatment with Thomas McMullan, M.D. Dr. McMullan is not an employee of Hunt Enterprises or Agriprocessors Inc. Because the claimant was being treated for a work-related injury, he was subjected to a drug and alcohol test. His alcohol test was positive. The claimant returned to work on July 9 and continued working for a short period of time. The employer received the results of the July 9 drug and alcohol test after the claimant finished working on July 12. When the claimant came into work on July 13 he was told by Ms. Billmeyer that he was being discharged for failing a drug and alcohol test on July 9. The claimant had received a copy of the employer's drug and alcohol testing policy when he was hired. The policy puts employees on notice that if they are sent for a medical treatment due to a work-related accident, then they will be subjected to a drug and alcohol test.

When Ms. Billmeyer told the claimant he was being discharged for testing positive for alcohol use, the claimant told her that "he was in pain." Ms. Billmeyer believed that to be the claimant's excuse for why he was drinking alcohol on July 9.

## 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 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 claimant was subjected to a drug and alcohol test pursuant to the employer's policy after he sustained a work-related injury which necessitated medical treatment. The test was positive for alcohol use. The claimant's denial that he used alcohol is not persuasive in light of the positive test. The claimant's allegation that the doctor took the sample from a toilet bowl is similarly not persuasive nor is his allegation that the doctor was prejudice because he was an employee of the employer. The treating and testing physician was not an employee of the employer. The claimant tested positive for alcohol use after a work-related accident which is sufficient misconduct to deny him unemployment insurance benefits. Benefits are denied.

**DECISION:**

The August 28, 2007, reference 01, 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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Teresa K. Hillary  
Administrative Law Judge

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Decision Dated and Mailed

tkh/pjs