

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

**JAMES R STACEY**  
Claimant

**APPEAL NO: 18A-UI-05482-JE-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HARBOR FREIGHT TOOLS USA INC**  
Employer

**OC: 04/15/18**  
**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the May 1, 2018, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on June 1, 2018. The claimant participated in the hearing. Ted Pitsoulaki, Store Manager, participated in the hearing on behalf of the employer.

**ISSUE:**

The issue is whether the employer discharged the claimant for work-connected misconduct.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time logistics supervisor for Harbor Freight Tools USA, Inc. from February 7, 2018 to April 3, 2018. He was discharged for failing to submit to an alcohol screening test.

On March 27, 2018, a customer called the corporate office and complained the claimant smelled like alcohol and was slurring his words. The district manager called Store Manager Ted Pitsoulakis and the claimant was sent for a fitness for duty evaluation around 3:30 p.m. The claimant waited approximately 45 minutes for his ride because the employer prefers employees provide their own transportation to testing. The claimant went to the assigned facility but after some questioning was told that clinic did not perform alcohol or drug screens. The receptionist told the claimant of another location that might do the required testing but did not provide an address or any further information and the claimant returned to the store. He explained the situation to another manager as Mr. Pitsoulakis had left for the day. That manager did not know how to respond and called the store manager in Waterloo for guidance. The Waterloo manager was not available at that time and the claimant went home to wait for a call regarding how to proceed. Human resources contacted the claimant and told him he was being placed on administrative leave because the two hour period for submitting to testing had expired. On March 28, 2018, the claimant was instructed to turn in his key and there would be a conference

call with human resources. The conference call never took place and on April 3, 2018, the claimant received a letter from the employer notifying him that his employment was terminated.

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

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

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 proving disqualifying misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 665 (Iowa 2000).

The claimant attempted to submit to testing in a timely manner but the facility where the employer sent him did not do testing. The claimant reported back to the employer but was not given any further instructions on where to go and was not told he had two hours to take the test. He subsequently went home and awaited further guidance but was not told to go to another facility before being placed on administrative leave the following day and terminated one week later.

The employer's actions were not reasonable under the circumstances. The claimant was willing to submit to testing and did go to the facility to which the employer directed him. It is not the claimant's responsibility to find another testing site and the employer never instructed him to go to a different facility or which one he should go to for testing after the first site did not offer reasonable suspicion testing. The employer also failed to advise the claimant he had two hours in which to complete the testing procedure. It is not reasonable to terminate the claimant's employment when the testing facility did not perform that type of test and the claimant was not notified he had two hours to take the test.

Under these circumstances, the administrative law judge finds the employer has not met its burden of proving disqualifying job misconduct as that term is defined by Iowa law. Therefore, benefits are allowed.

**DECISION:**

The May 1, 2018, reference 01, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

---

Julie Elder  
Administrative Law Judge

---

Decision Dated and Mailed

je/scn