

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHAEL BLYTHE
Claimant

APPEAL NO: 16A-UI-07247-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

ROCK COMMUNICATIONS LLC
Employer

OC: 06/05/16
Claimant: Appellant (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the June 22, 2016, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on July 20, 2016. The claimant participated in the hearing. Vilene Savage, Human Resources Administrator, participated in the hearing on behalf of the employer. Employer's Exhibit One was admitted into evidence.

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 fork-truck driver for Rock Communications from November 21, 2011 to June 2, 2016. He was discharged for refusing to take a drug screen.

On June 2, 2016, the claimant's name was randomly selected for drug testing by the employer's third party provider. The claimant was notified of the test and given directions to the test site. He arrived and provided a sample for the nurse on site but was informed his sample was not in temperature range. A sample must be between 90 and 100 degrees to be accepted for drug testing and the claimant's sample was over the high temperature allowed. The nurse instructed the claimant he needed to submit to testing again but the second time he would be observed when providing his sample. The claimant stated he would not be able to give another sample for several hours and he could not use the restroom in front of anyone else. The nurse told the claimant he would lose his job if he left and he needed to talk to Human Resources Administrator Vilene Savage. The claimant returned to the employer's premises and found his supervisor speaking with Ms. Savage. The claimant explained what happened and Ms. Savage notified the claimant that failure to provide a sample results in termination of his employment and the claimant was subsequently discharged.

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).

The employer has the burden of proving disqualifying misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged him for reasons constituting work-connected misconduct. Iowa Code section 96.5-2-a. Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duties and obligations to the employer. See 871 IAC 24.32(1).

When an employee fails to submit to a drug screen when randomly selected he is deemed to have failed the test as it is effectively considered a positive test. In this case the first sample provided by the claimant was outside the allowed temperature range and had to be discarded. Additionally, because the test was not within temperature range, the claimant had to provide a second sample and be directly observed providing that sample because of the likelihood of

tampering of the first test. The claimant refused to take a second test. Under the employer's policy and Iowa Code section 730.5, that action results in immediate termination.

Under these circumstances, the administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Therefore, benefits must be denied.

DECISION:

The June 22, 2016, 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.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs