

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

CHARLES N NOEL
APT 2
421 LOGAN AVE
WATERLOO IA 50703-3719

WHITAKER FOODS INC
PO BOX 3278
EVANSDALE IA 50707-0278

Appeal Number: 06A-UI-05029-DT
OC: 04/16/06 R: 03
Claimant: Respondent (2)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Whitaker Foods, Inc. (employer) appealed a representative's May 3, 2006 decision (reference 01) that concluded Charles N. Noel (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 25, 2006. The claimant participated in the hearing. Doug Dominy appeared on the employer's behalf and presented testimony from two other witnesses, Rex Stevens and Sue Dorn. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on November 6, 2003. He worked full time as a sanitation worker at the employer's breaded pork tenderloin manufacturing facility. His last day of work was April 14, 2006. The employer discharged him on that date. The stated reason for the discharge was reporting for work intoxicated.

The employer has a policy of which the claimant was on notice prohibiting employees from reporting for work under the influence of alcohol or other substances. The claimant had previously been warned for reporting to work under the influence of alcohol on March 23, 2006. The claimant reported for work on April 14 for his 2:00 p.m. shift. When he was leaving his locker to report to his duty station, Mr. Stevens, the facility manager, was about ten feet behind the claimant as the claimant was putting on his work jacket as he attempted to walk. The effort of attempting to walk while putting on his jacket caused the claimant to stumble sideways for a distance rather than walk forward. Mr. Stevens went to report his observation to Mr. Dominy, the production manager.

Meanwhile, the claimant reported to his duty station working with Ms. Dorn, the sanitation supervisor, and began working. She observed the smell of alcohol on the claimant's person and breath. She then went to report her observation to Mr. Dominy. Mr. Dominy instructed her to bring the claimant to his office, so she went back to the work station and got the claimant. While the two were waiting for Mr. Dominy, Ms. Dorn visited with the claimant and found his speech to be somewhat slurred.

When the claimant went in to Mr. Dominy's office, Mr. Dominy observed the claimant had a strong odor of alcohol on his person and breath and that his eyes were bloodshot and watering. He told the claimant that he concluded that he was again under the influence and that he was discharged. As the claimant left Mr. Dominy's office, Mr. Dominy observed the claimant stumble on the steps, and appeared disoriented as he went the wrong way several steps to go to his locker.

The claimant established a claim for unemployment insurance benefits effective April 16, 2006. The claimant has received unemployment insurance benefits after the separation from employment in the amount of \$721.00.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the employer discharged the claimant for reasons establishing work-connected misconduct. The issue is not whether the employer was right or even had any other choice but to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. Infante v. IDJS, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate decisions. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988). A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was

discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982); Iowa Code § 96.5-2-a.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The Iowa supreme court has defined "under the influence of alcohol" as when one of the following is true: "(1) the person's reason or mental ability has been affected; (2) the person's judgment is impaired; (3) the person's emotions are visibly excited; and (4) the person has, to any extent, lost control of bodily actions or motions." Benavides v. J.C. Penney Life Ins. Co., 539 N.W.2d 352 (Iowa 1995). At least two of the employer's witnesses observed the claimant's stumbling, a loss of control of bodily actions or motions. The claimant's reporting for work under the influence shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. The employer discharged the claimant for reasons amounting to work-connected misconduct.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's May 3, 2006 decision (reference 01) is reversed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of April 14, 2006. This disqualification continues until the claimant has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged. The claimant is overpaid benefits in the amount of \$721.00.

ld/kkf