

**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**

**ALFONSO FOX  
1201 E BELL AVE APT 1  
DES MOINES IA 50315-7400**

**TITAN TIRE CORPORATION  
2345 E MARKET ST  
DES MOINES IA 50317**

**Appeal Number: 06A-UI-05840-ET  
OC: 05-07-06 R: 02  
Claimant: Appellant (1)**

**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, 4<sup>th</sup> 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the May 24, 2006, 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 June 21, 2006. The claimant participated in the hearing with his father, Alonzo Fox. Joyce Cain, Human Resources Manager, participated in the hearing on behalf of the employer. Employer's Exhibit One was admitted into evidence.

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 laborer for Titan Tire from May 24, 2005 to February 8, 2006. He was injured at work on February 3, 2006, and was sent to see the company physician

February 6, 2006 at 4:00 p.m. The employer's policy requires that employees injured at work must provide a urine sample for drug testing and the claimant was unable to do so when first asked at the clinic. The claimant was given water to help the process and made some phone calls on his cell phone while waiting. His fiancé and child arrived at the clinic with some food and the claimant's work clothes and he was asked for another specimen at 4:45 p.m., but was still unable to provide one. The clinic personnel told him he could not leave the premises until he provided a sample. The next time the nurse went to check on him he was gone and his fiancé said he went to smoke a cigarette. The nurse observed him outside in a vehicle and told him he was not allowed to leave, but the claimant refused to come back in. The nurse told him that if he did not return it would be considered a refusal and when he did not agree to return to the clinic, the nurse told him the collection was over. The claimant testified he was not told he could not leave the clinic and was not given another chance to come in and provide the sample. The employer terminated his employment February 8, 2006 for refusing to take a drug test.

#### 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.

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 employer has the burden of proving disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). While the claimant testified he did not know he could not leave the premises, the three employer witness statements all indicate the claimant was told by at least two clinic employees he could not leave. Additionally, the claimant failed to return to the clinic when asked to do so by the nurse. The claimant's actions constitute a refusal to submit to drug testing following a work-related injury and that makes the issue of whether the claimant would have tested negative moot. 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. Consequently, the administrative law judge concludes the employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Benefits are denied.

DECISION:

The May 24, 2006, 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.

je/cs