

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JEFFREY L KURTZ
Claimant

APPEAL NO. 13A-UI-06699-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DEERY BROTHERS INC
Employer

OC: 05/12/13
Claimant: Appellant (1)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Jeffrey Kurtz, filed an appeal from a decision dated May 31, 2013, reference 01. The decision disqualified him from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on July 10, 2013. The claimant participated on his own behalf. The employer, Deery Brothers, participated by Fixed Operations Manager Ron Bennett, Collision Center Manager Terry Johnson and was represented by Employers Unit in the person of Jackie Nolan.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Jeffrey Kurtz was employed by Deery Brothers from May 30, 2011 until May 6, 2013 as a full-time production manager. He has worked for the employer in the past and as a result of issues arising during that previous employment, he was asked to sign an agreement before being rehired. The agreement was for him to submit to a substance abuse test before receiving his paycheck. The understanding was also that he was to have his driver's license reinstated because he had been suspended for drunk driving previously. A valid license is a requirement of the job.

On the evening of May 2, 2013, he was arrested for drunk driving by the Burlington, Iowa, police department. He called his girlfriend and instructed her to text Collision Center Manager Terry Johnson and inform her that he would be late to work the next day. But Mr. Kurtz never came to work at all and did not notify the employer of this. When he returned to work on Monday, May 6, 2013, he acknowledged he had been drinking and driving and was discharged.

REASONING AND CONCLUSIONS OF LAW:

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 administrative law judge finds the claimant's testimony to be of questionable credibility. During his testimony he maintained he was discharged solely for missing one day of work but subsequent testimony from the employer showed this not to be the case.

This equivocation by Mr. Kurtz convinces the judge that he knew full well he was to abstain from illegal drugs and drinking and driving to maintain his employment. The claimant voluntarily entered into an agreement that he would not consume drugs and alcohol during his employment. He did not have to sign it but did so in order to be rehired. He violated the agreement, put his license in jeopardy and did not properly report his full day of absence to the employer on May 3, 2013. This is a violation of the duties and responsibilities the employer has the right to expect of an employee and conduct not in the best interests of the employer. The claimant is disqualified.

DECISION:

The representative's decision of May 31, 2013, reference 01, is affirmed. Jeffrey Kurtz is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount in insured work, provided he is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/css