

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ERIC S DOXSEE**  
Claimant

**APPEAL NO: 10A-UI-01846-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**G M R I INC**  
Employer

**OC: 12/27/09  
Respondent: (1)**

Section 96.5-2-a - Discharge

**STATEMENT OF THE CASE:**

The employer appealed a representative's January 20, 2010 decision (reference 01) that held the claimant qualified to receive benefits and the employer's account subject to charge because the claimant had been discharged for nondisqualifying reasons. A telephone hearing was held on March 18, 2010. The claimant participated in the hearing with his witness, Bruce Head. Eric Holter, the general manager, and Therese Evens appeared on the employer's behalf. 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:**

Did the employer discharge the claimant for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant started working for the employer on March 29, 2008. The claimant worked as a full-time server. The employer's policy informs employees that the employer has zero tolerance for any employee reporting to work under the influence. If an employee reports to work under the influence, the employer terminates the employee.

The claimant worked a split shift on December 23, 2009. He left at 1:30 p.m. and went to a Mexican restaurant for lunch and to talk about personal issues with a co-worker, Head. When they were at the restaurant, the claimant did not have anything but water to drink. Head had an alcoholic beverage. The claimant and Head returned to work by 4:30 p.m. to work the rest of their split shift. When they returned to work, Holter detected an odor of alcohol on the claimant. Evens also detected the odor of alcohol on the claimant. When the employer asked the claimant if he had anything to drink between his shifts, he indicated he had not. Head told the employer he had a drink.

The employer discharged the claimant on December 23, 2009. The employer discharged the claimant after concluding he violated the employer's policy by reporting to work under the influence.

**REASONING AND CONCLUSIONS OF LAW:**

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code section 96.5-2-a. The Iowa Supreme Court has ruled that an employer cannot establish disqualifying misconduct based on a drug test performed in violation of Iowa's drug testing laws. *Harrison v. Employment Appeal Board*, 659 N.W.2d 581 (Iowa 2003); *Eaton v. Employment Appeal Board*, 602 N.W.2d 553, 558 (Iowa 1999). As the court in *Eaton* stated, "It would be contrary to the spirit of chapter 730 to allow an employer to benefit from an unauthorized drug test by relying on it as a basis to disqualify an employee from unemployment compensation benefits." *Eaton*, 602 N.W.2d at 558.

In this case, the employer did not ask the claimant to take a drug test. The employer did not establish that either witness is an expert in alcohol detection or has the ability to know when a person is under the influence. The employer did not establish that the claimant violated the employer's policy of reporting to work under the influence. Detecting an odor of alcohol on a person and reporting to work under the influence are not one in the same as Evens asserted. Since the employer did not ask the claimant to take any drug or alcohol test, the evidence does not establish that he reported to work under the influence. The employer's policy should define what under the influence means and how the employer will determine an employee is under the influence. In this case, Holter's and Evens' assertions the claimant smelled of alcohol does not establish that he violated the employer's drug and alcohol policy. The employer may have had business reasons for discharging the claimant. But the evidence does not establish that the claimant committed work-connected misconduct. As of December 27, 2009, the claimant is qualified to receive benefits.

**DECISION:**

The representative's January 20, 2010 decision (reference 01) is affirmed. The employer discharged the claimant for reasons that do not constitute work-connected misconduct. As of December 27, 2009, the claimant is qualified to receive benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/pjs