

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

NATHAN L MYHRE
Claimant

HYVEE INC
Employer

APPEAL NO. 21A-UI-06355-B2-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 01/24/21
Claimant: Appellant (1)**

Iowa Code § 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated February 26, 2021, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on May 5, 2021. Claimant participated. Employer participated by hearing representative Barbara Buss and witnesses Ryan Parker and Josh Brown.

ISSUE:

Whether claimant was discharged for misconduct?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on January 6, 2021. Claimant was terminated on that date for refusal to participate in a drug test after employer had reasonable suspicion that claimant was under the influence of marijuana at work.

Claimant worked as a full time meat cutter for employer. At the time of his hire, claimant received an employee handbook detailing employer's policy on a drug free workplace amongst other things.

On January 6, 2021 claimant was reported by a coworker of smelling of marijuana after claimant returned from lunch. Employer watched claimant struggle to do his job and called claimant up to an office. When claimant and employer met, claimant smelled of marijuana, had bloodshot eyes and was slurring his speech. Employer told claimant that they believed he was under the influence of marijuana. Claimant denied this. Employer told claimant that they were asking him to take a drug test to determine whether he was in fact under the influence of drugs.

Claimant refused to take a drug test. Claimant stated that he had smoked previously, but was not high at the time. As claimant refused to take the drug test, employer terminated claimant's employment.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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).

In this matter, the evidence established that claimant was discharged for an act of misconduct when claimant violated employer's policy concerning drug testing.

Iowa Code § 730.5 allows drug testing of an employee if, among other conditions, the employer has "probable cause to believe that an employee's faculties are impaired on the job." Iowa Code section 730.5(8) sets forth the circumstances under which an employer may test employees for the presence of drugs. Claimant's lethargic action at work and smell of marijuana about his person created a reasonable suspicion claimant was under the influence of marijuana.

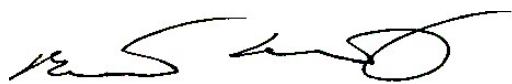
The definition of "reasonable suspicion" is found at section 730.5(1)h. The employer acknowledged that there had been observations of Claimant at work that would lead to the conclusion that claimant was using drugs. The employer cited abnormal conduct or

deterioration in his job performance. This creates a reason for employer to ask for a drug test as a condition of ongoing employment.

Claimant's refusal to submit to the drug test requested as a result of reasonable suspicion of drug use led to claimant's termination. Said termination resulted from claimant's actions against employer's interests by being high at work. Said termination was for misconduct.

DECISION:

The decision of the representative dated February 26, 2021, reference 01, is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.



Blair A. Bennett
Administrative Law Judge

May 13, 2021
Decision Dated and Mailed

bab/kmj