

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ALEX J BEVLY
Claimant

APPEAL NO. 10A-UI-01892-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

OC: 12/27/09
Claimant: Appellant (1)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Alex Bevly filed an appeal from a representative's decision dated February 1, 2010, reference 02, which denied benefits based on his separation from Tyson Fresh Meats, Inc. (Tyson). After due notice was issued, a hearing was held by telephone on March 16, 2010. Mr. Bevly participated personally. The employer responded to the notice of hearing but opted not to participate.

ISSUE:

At issue in this matter is whether Mr. Bevly was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Bevly was employed by Tyson from March 26, 2002 until December 28, 2009. He worked full time in shipping. He was discharged because he reported to work under the influence of alcohol on December 24, 2009. He was suspended on that date and notified of his discharge on December 28.

Mr. Bevly's usual work shift was from 3:30 p.m. until midnight. When he got off work at midnight on December 23, he was scheduled to return to work at 1:15 p.m. on December 24, approximately 13 hours later. He began drinking alcohol after he got off work on December 23 and does not recall what time he stopped. He drank at least eight mixed drinks, beer, and gin. He did not sleep or consume any food during the day. He reported to work but was sent home after approximately 30 minutes. Mr. Bevly acknowledged during the hearing that he drank too much and was not functioning. He said he was "not in his right mind." He further indicated that he was "too drunk to take the test" the employer apparently tried to administer. As a result of reporting to work after drinking too much, Mr. Bevly was discharged by Tyson on December 28, 2009.

REASONING AND CONCLUSIONS OF LAW:

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Mr. Bevly was discharged for reporting to work under the influence of alcohol. His own testimony established that he was in no condition to be at work on December 24. If one has consumed so much alcohol that he cannot cooperate in the alcohol testing procedures, he is clearly under the influence of alcohol. Mr. Bevly knew or should have known that his conduct was in violation of the employer's policy.

Reporting to work under the influence of alcohol constitutes a substantial disregard of the standards of behavior an employer has the right to expect. It is, therefore, misconduct within the meaning of the law. As such, Mr. Bevly is denied job insurance benefits.

DECISION:

The representative's decision dated February 1, 2010, reference 02, is hereby affirmed. Mr. Bevly was discharged by Tyson for misconduct in connection with his employment. Benefits are denied until he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he is otherwise eligible.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/pjs