

**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**

**LANCE C WEIPERT
1950 WHITE ST #4
DUBUQUE IA 52001**

**EAGLE WINDOW AND DOOR INC
ATTN AMY TURNER
PO BOX 1072
DUBUQUE IA 52004**

**Appeal Number: 06A-UI-00027-HT
OC: 02/20/05 R: 04
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, 4th 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.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Lance Weipert, filed an appeal from a decision dated December 22, 2005, reference 01. The decision disqualified him from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on January 18, 2006. The claimant participated on his own behalf. The employer, Eagle Window and Door, participated by Human Resources Representative Amy Turner. Exhibit One was admitted into the record.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Lance Weipert was employed by Eagle Window and Door from July 28, 2003 until November 30, 2005. He received a copy of the employee

handbook and drug policy. The drug policy provides for a drug screen to be given pre-employment, post-accident and with "reasonable suspicion."

On November 18, 2005, a supervisor was suspicious the claimant was under the influence of alcohol. The matter was referred to Plant Manager Bill Lynch, and he met with the claimant. During the meeting Mr. Lynch told the claimant he made the office "smell like a brewery." He took Mr. Weipert to Mercy Hospital, where a technician gave him a breathalyzer test. The first result was .16 and a second test, 15 minutes later, showed .17. Mr. Weipert acknowledged he had consumed 15 beers the night before between 4:00 p.m. and 12:30 a.m.

The claimant then gave a urine sample which was sent to Kroll Laboratories for analysis. A medical review officer contacted the claimant by phone on November 28, 2005, to say the test was positive for alcohol and marijuana metabolites, or THC. The employer received the test results on November 29, 2005, and Director of Human Resources Jeff Caron set up a meeting with the claimant for the next day.

The claimant asked to enter a rehab program, but this was an option only for a positive alcohol test, not controlled or illegal substances such as marijuana. Mr. Weipert was sent a letter by certified mail later that same day advising him of his right to have the sample retested at a laboratory of his choice at a cost of \$50.00. He was given until December 7, 2005, to notify the employer if he wanted the sample retested. The claimant never contacted Eagle Window and Door, because he knew the test would come back positive again.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes he is.

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 claimant was aware of the employer's drug policy and that he could be discharged for testing positive for controlled substances. He had readily admitted to being under the influence of alcohol when it was observed he smelled "like a brewery." The test at the hospital confirmed this and another test confirmed it as well, and that he tested positive for marijuana, a controlled substance.

The employer has the obligation to provide a safe and harassment-free work environment for all employees, and the claimant's conduct interfered with its ability to do so. Being under the influence of alcohol presented a danger to the claimant and other employees. This is conduct not in the best interests of the employer and the claimant is disqualified.

DECISION:

The representative's decision of December 22, 2005, reference 01, is affirmed. Lance Weipert is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount provided he is otherwise eligible.

bgh/kjw