

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

SCOTT L HARTZ
Claimant

APPEAL NO: 18A-UI-03937-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

ALUMINUM CO OF AMERICA
Employer

OC: 02/25/18
Claimant: Appellant (2)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the March 23, 2018, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on April 23, 2018. The claimant participated in the hearing with Financial Secretary USW Local 105 Michael Nicholas acting as his non-attorney representative. The employer sent a letter to the Appeals Bureau indicating it would not be participating in the hearing.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time maintenance mechanic for Aluminum Company of America from December 12, 1992 to February 26, 2018. He was discharged for a positive alcohol test.

On February 15, 2018, the claimant went to the employer's medical department to represent another employee. He returned a short time later to talk about his shoulder and the employer determined it could smell alcohol on his breath and gave him a breathalyzer test. The claimant tested at .052 the first test and .048 on a confirmatory test. He consumed alcohol the previous evening and stopped drinking around 10:00 p.m. The employer then gave the claimant a drug screen with negative results. The employer told the claimant it was going to send his drug test to a certified lab. The claimant was suspended pending the outcome of that test. A security guard drove the claimant home.

In 2002, the claimant tested positive for alcohol and was required to seek treatment. He returned to work following rehabilitation and signed a last chance agreement which allowed the employer to conduct random testing on the claimant for the following two years. The claimant did not have any further positive tests until February 15, 2018.

Under the employer's policy and state law, two positive tests for alcohol are grounds for immediate termination. The employer's contract with the union states that if an employee goes three years without another violation of any kind, his record will be wiped clean. The claimant did not have any violations of the employer's policy or the union contract for the three years after the positive alcohol test in 2002.

The employer determined that its policy language supersedes the union contract language and terminated the claimant's employment February 26, 2018.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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).

The employer has the burden of proving disqualifying misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but

the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 665 (Iowa 2000).

When misconduct is alleged as the reason for the discharge and subsequent disqualification of benefits, it is incumbent upon the employer to present evidence in support of its allegations. Allegations of misconduct without additional evidence shall not be sufficient to result in disqualification. 871 IAC 24.32(4). The employer did not participate in the hearing and failed to provide any evidence demonstrating that its drug and alcohol policy meets Iowa Code section 730.5; that the person or persons who allegedly formed a reasonable suspicion the claimant had used alcohol underwent the required training; or that its testing procedures as carried out comply with its policy; to name a few issues where the employer did not meet its burden of proof. The evidence provided by the claimant does not rise to the level of disqualifying job misconduct as that term is defined by Iowa law. The employer has not met its burden of proof. Therefore, benefits must be allowed.

DECISION:

The March 23, 2018, reference 01, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/scn