

**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**

**DENNIS A DEAVER JR
710 E MADISON ST
KNOXVILLE IA 50138**

**HY-VEE INC
TALX UCM SERVICES INC
PO BOX 283
ST LOUIS MO 63166 0283**

**TALX UC EXPRESS
3799 VILLAGE RUN DR 511
DES MOINES IA 50317**

**Appeal Number: 05A-UI-00770-H2T
OC: 12-19-04 R: 02
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/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the January 20, 2005, reference 02, decision that denied benefits. After due notice was issued, a hearing was held on February 10, 2005. The claimant did participate along with his witness, Mike Winters, Probation Officer. The employer did participate through Sheila Laing, Assistant Vice President of Human Resources and Distribution, and was represented by David Williams of Talx UC express.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a warehouse order selector full time beginning August 5, 2002 through November 22, 2004 when he was discharged. On November 23, 2004 the claimant

called Ms. Laing and told her that he was on probation after a September 12, 2004 conviction for conspiracy to deliver marijuana. The claimant had tested positive after a drug test administered by his probation officer and was going to either be incarcerated or admitted into a drug treatment program. The notification by the claimant to Ms. Laing on November 23, 2004 was the first knowledge the employer had of the claimant's drug conviction. The claimant had been given a copy of the employer's drug policy which provides in part: "The company prohibits the use of alcohol, illegal drugs or any controlled substance other than authorized prescription drugs on company property. Illegal distribution, possession or use of any of the above shall be grounds for dismissal, whether on or off the clock." (Employer's Exhibit One) The claimant had been given a copy of the employer's drug and alcohol policy. The employer's union contract also provides that the claimant can be discharged without warning letter upon conviction or admission of guilt for possession or use of illegal drugs. The claimant violated the employer's policy and the union contract.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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).

An employer has a right to expect employees to conduct themselves in a certain manner, specifically that employees abide by the employer's handbook and policy rules and regulations. The claimant violated the employer's policy against illegal drug use or possession and violated the union contract. The claimant's disregard of the employer's rights and interests is substantial misconduct sufficient to disqualify him from receiving unemployment insurance benefits. Benefits are denied.

DECISION:

The January 20, 2004, reference 02, decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

tkh/s