

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TROY J NAIL
Claimant

APPEAL NO. 07A-UI-03538-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HFL LLC
Employer

OC: 03/11/07 R: 02
Claimant: Appellant (1)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Troy Nail filed an appeal from a representative's decision dated April 2, 2007, reference 06, which denied benefits based on his separation from HFL, LLC. After due notice was issued, a hearing was held by telephone on April 23, 2007. Mr. Nail participated personally. The employer participated by Carol Fay, General Manager, and was represented by Frank Harty, Attorney at Law.

ISSUE:

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

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Nail was employed by HFL, LLC, doing business as Johnny's Hall of Fame, from February 20 until March 5, 2007. He worked approximately 20 hours each week as a cook. He was discharged due to tardiness, not getting along with coworkers, and using drugs on the premises.

Mr. Nail was late reporting to work on two occasions but was not disciplined regarding his attendance. On March 3, he had a verbal altercation with a coworker, Robert, concerning who was to do prep work. Although Mr. Nail had a knife in his hands during the altercation, he did not threaten Robert with it. He was using the knife in the course of his work. Robert was sent to the bar area while Mr. Nail remained in the kitchen. The general manager spoke to Robert at the bar, at which time he disclosed that Mr. Nail had been bringing drugs to work. The decision was made to discharge Mr. Nail and he was notified of the discharge on March 5, 2007. He acknowledged during the hearing that he and others used drugs in the basement of the workplace. Management was not previously aware of the drug usage.

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). Part of the reason for Mr. Nail's discharge was the fact that he had been late on two occasions. However, he had not been warned that his tardiness was jeopardizing his continued employment. He did have an argument with a coworker on March 3. Although Mr. Nail participated in the argument, he was not the instigator. He did not threaten Robert during the exchange.

Mr. Nail's admitted drug usage on the job is sufficient to establish disqualifying misconduct. He worked in a kitchen with sharp utensils and hot surfaces. An individual at work in such an environment while under the influence of drugs poses a threat to his own safety and that of others working in the kitchen. As such, there was the potential of exposing the employer to unnecessary worker's compensation liability. The employer had the right to expect that Mr. Nail would be at drug-free while at work. His conduct in using drugs at work constituted a substantial disregard of the employer's interests and standards. For the above reasons, benefits are denied.

DECISION:

The representative's decision dated April 2, 2007, reference 06, is hereby affirmed. Mr. Nail was discharged for misconduct in connection with his employment. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he satisfies all other conditions of eligibility.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/pjs