

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DARRELL ANDERSEN
Claimant

TYSON FRESH MEATS INC
Employer

APPEAL 21A-UI-11313-SN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 03/14/21
Claimant: Appellant (1)**

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Admin. Code r. 871-24.32(1)a – Discharge for Misconduct
Iowa Code § 730.5 – Private Sector Drug-free Workplaces

STATEMENT OF THE CASE:

The claimant filed an appeal from the April 6, 2021, (reference 01) unemployment insurance decision that denied benefits based upon the conclusion he was discharged for violating a known company rule. The parties were properly notified of the hearing. A telephone hearing was held on July 9, 2021. The claimant participated and testified. The employer did not participate. The employer's representative requested a postponement because she was on vacation on the day of the hearing. The administrative law judge denied this request for postponement. Exhibits A, B and C were admitted into the record.

ISSUE:

Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

The claimant was employed full-time as an MQ lift operator from January 30, 2016, until he was separated from employment on March 13, 2021, when he was terminated. The claimant's immediate supervisor was Enis (last name unknown).

The employer has an employee handbook. Within that employee handbook is a drug and alcohol policy prohibiting employees from being under the influence of drugs at work. It also states the consequences of refusing to undergo drug testing. The claimant was received training regarding these policies at the time of his hire.

On January 30, 2021, the claimant injured his shoulder operating lift at work. He was prescribed muscle relaxers for this injury.

The claimant was on a leave of absence from February 16, 2021 through February 23, 2021 for a non-work related injury, when he obtained a release to return to work without restriction. The employer provided a copy of his leave paperwork. (Exhibit B)

The claimant was on a leave of absence from March 3, 2021 to March 8, 2021 for a non-work related injury. The claimant provided a copy of a doctor's note excusing him from attending work on those days.

On March 9, 2021, the claimant told one of the employer's occupational health nurses (name unknown) that he was taking double the prescribed dose of his muscle relaxers. The nurse told the claimant that he could not be on the floor working under the influence of muscle relaxers.

On March 13, 2021, the claimant attempted to enter the plant, but he was informed through a union representative, Myra Oden, that Superintendent Ryan (last name unknown) stated he was required to take a urinalysis before returning to work. The claimant refused to take the drug test. Due to his refusal, the claimant was told he would be terminated.

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:

Causes for disqualification.

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.

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. *Reigelsberger v. Emp't Appeal Bd.*, 500 N.W.2d 64, 66 (Iowa 1993); accord *Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661, 665 (Iowa 2000).

The employer has the burden of proving disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). Whether an employee violated an employer's policies is a different issue from whether the employee is disqualified for misconduct for purposes of unemployment insurance benefits. See *Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661, 665 (Iowa 2000) ("Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of benefits." (Quoting *Reigelsberger*, 500 N.W.2d at 66.)).

Testing under Iowa Code section 730.5(4) allows employers to test employees for drugs and/or alcohol but requires the employer "adhere to the requirements . . . concerning the conduct of such testing and the use and disposition of the results."

Iowa Code section 730.5(1)*i* allows drug testing of an employee upon "reasonable suspicion" that an employee's faculties are impaired on the job or on an unannounced random basis. It also allows testing as condition of continued employment or hiring. Iowa Code § 730.5(4). Iowa Code section 730.5(9) requires that a written drug screen policy be provided to every employee subject to testing.

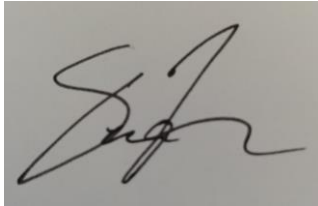
In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

After assessing the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using his own common sense and experience, the administrative law judge finds the claimant not credible. Specifically, the claimant states the employer did not have an employee handbook. This incredible allegation and the claimant's evasive responses regarding the circumstances leading to his discharge lead him to find that the employer had a drug and alcohol policy compliant with the code.

The employer has met the requirements of Iowa Code section 730.5. The claimant did receive a copy of employer's drug and alcohol use policy. The claimant's disclosure that he was on twice his prescribed dose to the company nurse on March 9, 2021, gave the employer reasonable suspicion that he was under the influence of drugs at work. Employees are required to be drug free in the workplace. The violation of the known work rule constitutes misconduct as it presents a safety hazard to the employee and the general public and potential liability for the employer.

DECISION:

The April 6, 2021, (reference 01) unemployment insurance 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.



Sean M. Nelson
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July 21, 2021
Decision Dated and Mailed

smn/lj