

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

STEVEN C CROSBY
Claimant

BRACE INTEGRATED SERVICES INC
Employer

APPEAL 17A-UI-06093-LJ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/14/17
Claimant: Appellant (1)

Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from the June 8, 2017 (reference 01) unemployment insurance decision that denied benefits based upon a determination that claimant was discharged for violation of a known company rule. The parties were properly notified of the hearing. A telephone hearing was held on June 29, 2017. The claimant, Steven C. Crosby, participated. The employer, Brace Integrated Services, Inc., participated through Terrence Batiste, HR Coordinator.

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: Claimant was employed full time, most recently as a maintenance employee, from September 22, 2014, until May 18, 2017, when he was discharged for refusing to take a urinalysis test. On May 18, claimant was involved in a workplace accident in which he was operating a vehicle and hit a contractor who was on foot. Batiste testified that the employer has a policy requiring any employee who is involved in a workplace accident where the damage caused exceeded \$1,000.00 to take a post-accident urinalysis test. Batiste further testified that claimant signed a document acknowledging receipt of this policy.

Claimant admits he was asked to take a urinalysis test, and he refused to take the test. He testified that two other employees were involved in accidents that morning, and neither of those employees were asked to take a urinalysis test. Claimant testified that neither of these employees hit a person with a vehicle. Claimant admits that he was told he would be discharged if he did not take the urinalysis test.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for disqualifying, job-related misconduct. Benefits are withheld.

Iowa Code § 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.

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 to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988). The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661 (Iowa 2000).

"[W]illful misconduct can be established where an employee manifests an intent to disobey the reasonable instructions of his employer." *Myers v. IDJS*, 373 N.W.2d 507, 510 (Iowa 1983) (internal citation omitted). Iowa courts and the Employment Appeal Board analyze situations involving alleged insubordination by assessing both the reasonableness of the employer's request and the employee's reason for refusing to comply with the request. See, e.g. *Endicott v. Iowa Dep't Job Serv.*, 367 N.W.2d 300 (Iowa App. Ct. 1985). Good faith is measured not by the claimant's subjective understanding of the situation by an objective standard of

reasonableness. “The key question is what a reasonable person would have believed under the circumstances.” *Aalbers v. Iowa Dep’t Job Serv.*, 431 N.W.2d 330, 337 (Iowa 1988).

Here, claimant refused to take a post-accident urinalysis test. While he claims that other individuals caused accidents that same day and were not required to take the urinalysis test, neither of the other individuals had accidents involving hitting a person with a vehicle. Claimant did not refute that the employer has a post-accident testing policy, and he admits being told that he would lose his job if he refused to take the urinalysis test. Claimant’s actions amount to insubordination and disqualifying misconduct even without prior warning. Benefits are withheld.

DECISION:

The June 8, 2017 (reference 01) unemployment insurance decision is affirmed. 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.

Elizabeth A. Johnson
Administrative Law Judge

Decision Dated and Mailed

lj/scn