

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TERRANCE J ANGLIN
Claimant

APPEAL NO. 10A-UI-08838-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OLYMPIC STEEL IOWA INC
Employer

**Original Claim: 05/31/09
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Terrance Anglin filed a timely appeal from a representative's decision dated June 16, 2010, reference 05, that denied benefits. After due notice was issued, a hearing was held by telephone on August 6, 2010. Mr. Anglin participated. The employer participated by Dan Springer, human resource manager, and Kirk Pittman, second shift supervisor.

ISSUE:

The issue is whether the claimant was discharged for misconduct in connection with the employment that disqualifies him for unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all the evidence in the record, the administrative law judge finds: Terrance Anglin was employed by Olympic Steel Iowa, Inc. as a full-time machine operator from November 2, 2009, until May 22, 2010, when he was discharged from employment.

The incident that prompted the discharge occurred on May 14, 2010, concerning a positive breath alcohol test. At 12:50 a.m., Mr. Pittman, a second shift supervisor, smelled alcohol on the breath of Mr. Anglin while giving Mr. Anglin work directives. The smell of alcohol was confirmed by the claimant's immediate supervisor, Ron Bragg. The employer did not note any unusual behavior on the part of Mr. Anglin; but, based upon the smell of alcohol on his breath, a decision was made to have Mr. Anglin undergo alcohol testing. The claimant was transported to the testing facility during working hours. The first test indicated a test result of .118. The second test indicated a test result of .114. The testing facility contacted Olympic Steel and advised that Mr. Anglin had provided a positive breath alcohol test. After the test, the claimant was transported home. Approximately one week later, he was verbally informed of the test results and discharged from employment based upon the positive breath alcohol test.

The employer has a written substance abuse policy set forth in a policy manual and Mr. Anglin had acknowledged receipt of a copy of the employer's handbook.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Mr. Anglin was discharged for misconduct in connection with the employment. It does not.

The employer has the burden of proof in this matter. See Iowa Code section 96.6-2. Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee may not necessarily be serious enough to warrant a denial of unemployment benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa App. 1992).

Allegations of misconduct without additional evidence shall not be sufficient to result in a disqualification. If the employer is unable to furnish evidence to corroborate the allegation, misconduct cannot be established. See 871 IAC 24.32(4).

Iowa Code section 730.5 provides the authority under which a private sector employer doing business in Iowa may conduct drug or alcohol testing of employees. In Eaton v. Iowa Employment Appeal Board, 602 N.W.2d 553 (Iowa 1999), the Supreme Court of Iowa considered the statute and held that "an illegal drug test cannot provide the basis to render an employee ineligible for unemployment compensation benefits." Thereafter, in Harrison v. Employment Appeal Board, 659 N.W.2d 581 (Iowa 2003), the Supreme Court of Iowa held that where an employer had not complied with the statutory requirements for the drug test, the test cannot serve as a basis for disqualifying a claimant for benefits.

In the present case, the employer had reasonable suspicion to request a breath alcohol test. However, the presence of reasonable suspicion is only one factor to be considered. Other factors set forth in Iowa Code section 730.5 must be considered before the breath alcohol test can serve as a basis for discharging Mr. Anglin from the employment. The method of collecting the sample and the testing were conducted within the requirements of section 730.5 and the employer was not required to provide rehabilitation under section 730.5(10)(a)(1), because he had not been in the employment at least 12 of the preceding 18 months. The method of notification however, did not meet the requirements of the Iowa private sector drug/alcohol testing statute.

Section 730.5(1) requires that if a confirmed positive test result for drugs or alcohol of a current employee is reported to the employer by the medical review officer, the employer shall notify the employee in writing by certified mail, return receipt requested, of the results of the test and the employee's right to request and obtain a confirmatory test of the second sample collected at an approved laboratory of the employee's choice and the fee payable by the employee to the employer for the reimbursement of expenses concerning the test.

Because the employer did not comply with Iowa Code section 730.5, the breath alcohol test obtained on May 14, 2010, was not authorized by law and cannot serve as a basis for disqualifying Mr. Anglin from unemployment insurance benefits. Based upon the evidence in the record and the application of the appropriate law, the administrative law judge concludes Mr. Anglin therefore was discharged for no disqualifying reason and, accordingly, is eligible for benefits, provided he meets all other eligibility requirements of Iowa law.

DECISION:

The representative's decision dated June 16, 2010, reference 05, is reversed. The claimant was discharged for no disqualifying reason. The claimant is eligible for benefits, provided he meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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