

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**LASHAWN R ANDERSON**  
Claimant

**STELLAR MANAGEMENT GROUP V INC**  
Employer

**APPEAL 17A-UI-05201-LJ-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 04/16/17**  
**Claimant: Appellant (2)**

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

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the May 10, 2017 (reference 01) unemployment insurance decision that denied benefits based upon a determination that claimant was discharged for being intoxicated on the job. The parties were properly notified of the hearing. A telephone hearing was held on June 2, 2017. The claimant, Lashawn R. Anderson, participated. The employer, Stellar Management Group V, Inc., did not register a telephone number at which to be reached and did not participate in the hearing. The administrative law judge took official notice of the fact-finding documentation.

**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 sanitation worker, from the last part of 2015 until March 16, 2017, when he was discharged.

Claimant testified that on March 16, he consumed two beers around 4:30 p.m. He reported to work at 11:45 p.m. He had a conversation with a coworker, and then he was called into the office. The employer informed him that someone reported that he smelled like alcohol. When asked if he had been drinking, claimant reported that he had not, but that he did have two beers approximately seven hours earlier. The employer then discharged claimant. Claimant testified that he believes the employer had a policy requiring a breathalyzer test if an employee is suspected of being intoxicated. Claimant was not offered a breathalyzer test. Claimant had never been warned for any similar incidents.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason. Benefits are allowed.

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).

Iowa Admin. Code r. 871-24.32(4) provides:

(4) Report required. The claimant's statement and the employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

In an at-will employment environment an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, it incurs potential liability for unemployment insurance benefits related to that separation. Here, the employer did not participate in the hearing. It provided no documents in lieu of participation, and the fact-finding documents do not indicate that any firsthand witness participated at that stage. Claimant provided unrefuted testimony that he had not been drinking prior to his shift on March 16 in such a way that his ability to perform his job would have been impaired. The employer has not met

its burden of proving claimant was discharged for any disqualifying misconduct. Benefits are allowed, provided the claimant is otherwise eligible.

**DECISION:**

The May 10, 2017 (reference 01) unemployment insurance decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

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Elizabeth A. Johnson  
Administrative Law Judge

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Decision Dated and Mailed

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