

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JAMES L MOSES
Claimant

APPEAL NO. 11A-UI-08105-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TA OPERATING LLC
Employer

**OC: 03/20/11
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

James L. Moses filed an appeal from an unemployment insurance decision dated April 11, 2011, reference 01, that disqualified him for benefits. After due notice was issued, a hearing was held July 15, 2011. Mr. Moses did not respond to the notice. Deniece Norman appeared on behalf of the employer, TA Operating. Darcy Knickerbocker also participated. Exhibit D-1, the documents from the fact-finding process, was admitted into evidence.

ISSUE:

Was the claimant discharged for misconduct?

FINDINGS OF FACT:

James L. Moses reported to work on March 16, 2011, while under the influence of alcohol. He acknowledged this in a conversation with his manager on March 19, 2011. He was discharged as a result of this on March 20, 2011. Company policy prohibits reporting to work under the influence of intoxicating beverages. It provides for discipline up to and including discharge.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence establishes that the claimant was discharged for misconduct in connection with his employment. It does.

Iowa Code section 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.

871 IAC 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.

The employer's evidence is uncontradicted, since the claimant did not participate in the contested case hearing and had not participated in the fact-finding process. Benefits are withheld.

DECISION:

The unemployment insurance decision dated April 11, 2011, reference 01, is affirmed. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw