

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DONNA M GADDY**  
Claimant

**APPEAL NO. 10A-UI-04400-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**VITAMIN WORLD INC**  
Employer

**OC: 02/14/10**  
**Claimant: Respondent (1)**

Section 96.5(2)a – Discharge

**STATEMENT OF THE CASE:**

The employer, Vitamin World, filed an appeal from a decision dated March 9, 2010, reference 01. The decision allowed benefits to the claimant, Donna Gaddy. After due notice was issued, a hearing was held by telephone conference call on May 4, 2010. The claimant participated on her own behalf. The employer participated by Manager Lisa Hopper. Exhibit One was admitted into the record.

**ISSUE:**

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

**FINDINGS OF FACT:**

Donna Gaddy was employed by Vitamin World from August 2009 until January 15, 2010 as a part-time salesperson. On January 6, 2010, the claimant was scheduled to work 5:30 p.m. until 9:30 p.m. At 3:00 p.m. she called Manager Lisa Hopper to say she would not be in as she did not have money to take the bus to work. Ms. Hopper arranged for someone to get the claimant and she arrived around 5:45 p.m.

The manager smelled alcohol on the claimant and Ms. Gaddy admitted she had been drinking earlier in the day. She had had single can of beer around 11:00 a.m. but had showered and brushed her teeth before coming to work. Ms. Hopper did not feel the claimant was impaired but was “not acting like herself.” She consulted with the district manager and was instructed to suspend the claimant and send her home pending further action. The claimant was notified on January 18, 2010, by District Manager Misty McMullen she was fired.

## REASONING AND CONCLUSIONS OF LAW:

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 claimant did not deny drinking before work on January 6, 2010, before going to work. But her claim is that she had only one beer six hours before she was scheduled to work and had showered and brushed her teeth before going to work. The employer acknowledged the claimant did not seem to be impaired, only that she smelled of alcohol and should not be around the customers.

The administrative law judge does not find the claimant's testimony to be any more or less credible than that of the employer. But the employer has the burden of proof to establish the discharge was due to substantial, job-related misconduct by a preponderance of the evidence and has not done so. There is no corroborating evidence the claimant smelled like alcohol or that any customers complained of it. She was not in possession of alcohol on the premises, nor under the influence while working. Misconduct has not been established and disqualification may not be imposed.

**DECISION:**

The representative's decision of March 9, 2010, reference 01, is affirmed. Donna Gaddy is qualified for benefits, provided she is otherwise eligible.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

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