

**IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI**

**CRAIG L PRYOR  
402 ELY  
WOODBINE IA 51579**

**NATURAL MATERIALS LLC  
1408A HWY 44 STE 800  
HARLAN IA 51537**

**Appeal Number: 06A-UI-04668-JTT  
OC: 12/11/05 R: 01  
Claimant: Appellant (2)**

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5(2)(a) – Discharge for Misconduct

STATEMENT OF THE CASE:

Claimant Craig Pryor filed a timely appeal from the April 17, 2006, reference 02, decision that denied benefits. After due notice was issued, a hearing was held on May 17, 2006. Both parties failed to respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate. The administrative law judge took official notice of the Agency administrative file including the documents submitted and generated in connection with the fact-finding interview.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: On October 4, 2004, claimant Craig Pryor commenced employment as a full-time driver with Western Iowa Limestone. The evidence does not indicate whether Mr. Pryor was required to

maintain a commercial driver's license to perform his duties. On December 22, 2005, Western Iowa Limestone implemented a Drug Free Workplace Policy. On December 22, 2005, Mr. Prior signed acknowledgment of the policy and attended a safety meeting that addressed the policy. The policy does not indicate the legal authority under which it was implemented and makes no reference to either federal or state law. Effective February 28, 2006, Natural Materials purchased Western Iowa Assets. Mr. Pryor continued in his same employment. Natural Materials adopted the Drug Free Workplace Policy that had been implemented in December 2005. The portion of the policy the employer provided to the fact-finder only addresses company-wide random testing to be conducted quarterly. As the sentence that appears before the random testing information indicates, a refusal to or failure to submit to testing will result in termination of employment.

On March 2, 2006, the employer requested a urine sample from all employees working at a particular work site. St. Luke's Occupational Health Services of Omaha collected the specimens. On the form used to document the test, St. Luke's personnel checked a box indicating that the reason for the test was "Pre-Qualification." The boxes next to "Random," "Reasonable Cause," and "Post Accident" were left unchecked. It is unclear whether the sample was drawn as a split sample. The method by which St. Luke's tested the sample is also unclear. The form used to document the test indicates that Mr. Pryor provided a sample that tested negative, but was diluted. The form indicates that St. Luke's reported the test result to employer representative Debbie Bryan on March 6. However, the form indicates that Medical Review Officer Douglas Martin, M.D., did not review or approve the test result report until March 9, 2006. The medical review officer had no discussion with Mr. Pryor regarding the test results. It is unclear whether the employer provided Mr. Pryor with a copy of the test results. On March 12, the employer requested a second urine sample from Mr. Pryor, but Mr. Pryor refused to provide a sample. Safety Manager Darby Sanders responded by discharging Mr. Pryor from the employment for refusing to provide the sample.

#### REASONING AND CONCLUSIONS OF LAW:

The question is whether Mr. Prior was discharged for misconduct in connection with the employment that disqualifies him for unemployment insurance benefits. It does not.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

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 is not necessarily 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 Ct. App. 1992).

The termination of employment must be based on a current act of misconduct. See 871 IAC 24.32(8).

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. See 871 IAC 24.32(4). When it is in a party's power to produce more direct and satisfactory evidence than is actually produced, it may fairly be inferred that the more direct evidence will expose deficiencies in that party's case. See Crosser v. Iowa Dept. of Public Safety, 240 N.W.2d 682 (Iowa 1976).

Iowa Code section 730.5 authorizes private sector employers to subject employees to drug or alcohol testing under specific circumstances and prescribes procedures and parameters to which the employer must adhere in requesting or conducting such tests. The evidence in the record fails to establish that the employer complied with the requirements set forth in Iowa Code section 730.5.

U.S. Department of Transportation regulations subject transportation employers and their drivers to drug testing regulations and prescribe procedures and parameters to which the employer must adhere in requesting or conducting such tests. 49 C.F.R. Subtitle A, Part 40. The evidence in the record fails to establish that the employer complied with the requirements

set forth with the federal regulations in requesting or conducting the test(s) pertaining to Mr. Pryor.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Pryor was discharged for no disqualifying reason. Accordingly, Mr. Pryor is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits paid to Mr. Pryor.

**DECISION:**

The Agency representative's decision dated April 17, 2006, reference 02, is reversed. The claimant was discharged for no disqualifying reason. The claimant is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits paid to the claimant.

jt/kkf