

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOSHUA J LANNING
Claimant

APPEAL NO. 15A-UI-08293-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

ROCKTENN CP LLC
Employer

OC: 06/28/15
Claimant: Respondent (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

RockTenn (employer) appealed a representative's July 14, 2015, decision (reference 01) that concluded Joshua Lanning (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for August 17, 2015. The claimant did not provide a telephone number for the hearing and, therefore, did not participate. The employer participated by Brad Combs, Production Superintendent; Tyronne Greaves, Third Shift Converting Supervisor; and Kelly Shanks, Third Shift Corrugator Supervisor. Exhibit D-1 was received into evidence. The employer offered and Exhibit One was received into evidence.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on May 15, 2014, as a full-time corrugator/flyer. The claimant signed for receipt of the employer's handbook and Substance Abuse Policy on May 15, 2014. The policy indicates the employer may test employees if the employer has a reasonable suspicion the employee is under the influence of drugs, alcohol or medications during employment. The employer attended training to recognize employees who are under the influence of drugs. The policy indicates that a positive test is just cause for immediate discharge.

On June 24, 2015, two supervisors thought the claimant was acting erratically at work and asked the claimant to submit to drug testing immediately after his shift ended. In an immediate initial test, the claimant appeared to test positive. The employer suspended the claimant pending full testing. The employer sent the sample to a laboratory for testing. The employer called the claimant with the results of the testing and to terminate him but the claimant did not answer the telephone.

The claimant filed for unemployment insurance benefits with an effective date of June 28, 2015. The employer did not participate at the fact-finding interview on July 13, 2015.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

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.

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 Code section 730.5(9) requires that a written drug screen policy be provided to every employee subject to testing. Iowa Code section 730.5(7)(i)(1) mandates that an employer, upon a confirmed positive drug or alcohol test by a certified laboratory, notify the employee of the test results by certified mail and the right to obtain a confirmatory test before taking disciplinary action against an employee. Upon a positive drug screen, Iowa Code section 730.5(9)(g) requires, under certain circumstances, that an employer offer substance abuse evaluation and treatment to an employee the first time the employee has a positive drug test. The Iowa Supreme Court has held that an employer may not "benefit from an unauthorized drug test by relying on it as a basis to disqualify an employee from unemployment compensation benefits." Eaton v. Iowa Employment Appeal Board, 602 N.W.2d at 558.

The employer failed to give the claimant notice of the test results according to the strict and explicit statutory requirements and failed to allow him an opportunity for evaluation and treatment. The employer did not provide information to the claimant about an employee assistance program or other substance abuse programs as required by Iowa Code section 730.5(9)(c). Benefits are allowed.

DECISION:

The representative's July 14, 2015, decision (reference 01) is affirmed. The employer has not met its proof to establish job-related misconduct. Benefits are allowed.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/css