

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JEFF A WALDING
Claimant

WELLS ENTERPRISES INC
Employer

APPEAL 15A-UI-13795-JP-T
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 11/15/15
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the December 3, 2015, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on January 6, 2016. Claimant participated. Employer participated through representative, Alyce Smolsky, human resources business partner, Courtney Wilson, Amy Peterson (occupational health nurse with Unity Pointe), and Dr. Sarvenaz Jabbari. Employer Exhibit One was admitted into the record with no objection.

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 as an assistant machine operator from January 31, 2005, and was separated from employment on September 3, 2015, when he was discharged.

Claimant was discharged for a confirmed positive drug test result for marijuana from a random drug screen. The employer has a written drug and alcohol policy. Employer Exhibit One. Claimant was given a copy of the drug and alcohol policy. Employer Exhibit One. The policy provides for uniform standards for actions that are taken in case of a confirmed positive test. Employer Exhibit One. There is an awareness program and a resource file. Employer Exhibit One. The employer does provide annual training to supervisory personnel regarding drug and alcohol abuse. For random drug tests, the employer uses Unity Point, a third party company. The employer sends a list of all the employees to Unity Point, and a computer generates a random pull from the pool and the selected employees are sent back to the employer. It does not matter if an employee was tested previously. Every employee has the same chance to be selected. Claimant was notified he was going to be tested on August 24, 2015 by his supervisor during his regular shift. The employer notified claimant what he was being tested for, which included marijuana. Employer Exhibit One. The sample is collected in a private, locked down bathroom. Claimant signed the Drug Test Consent Form prior to being tested. Employer Exhibit One. Claimant did not have any questions. Claimant submitted a urine sample. Ms. Peterson

did an instant test which resulted in a non-negative result. The sample was then put into a split container. The primary sample was at least 30 milliliters and the second sample was at least 15 milliliters. The chain of custody form was filled out and samples were sealed. The samples were both sent to a certified lab (Clinical Reference Laboratory). Ms. Peterson told claimant that it was non-negative and claimant did not say anything. Claimant was suspended without pay pending the certified results.

Dr. Jabbari reviewed the results of the drug screen for claimant. Employer Exhibit One. The results were positive for marijuana metabolites on the confirmatory test. Dr. Jabbari spoke with claimant on September 1, 2015. Dr. Jabbari informed claimant his drug test resulted in a confirmed positive result for marijuana. Claimant did not request the second sample to be tested. Dr. Jabbari did a Urine Drug Test Report and provided it to the employer. Employer Exhibit One. Dr. Jabbari has been a medical review officer since 2011. Dr. Jabbari uses a certified lab for the testing. Claimant is given a copy of the chain of custody which states he is the person that submitted the sample. Claimant did not give any explanation for the positive result.

The employer was notified on September 1, 2015 of claimant's confirmatory positive drug screen for marijuana, which was a violation of the drug and alcohol policy. Employer Exhibit One. A letter was drafted to claimant on September 2, 2015 and mailed certified return receipt requested to claimant, which claimant received. Employer Exhibit One. Claimant was made aware he could request a second test at a lab of his choice. Employer Exhibit One. Claimant never requested a second test. Ms. Wilson contacted claimant on September 3, 2015 and terminated claimant's employment. Claimant asked about his vacation time, but did not say anything about the positive test result. The employer paid for the drug testing.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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).

On August 24, 2015, pursuant to a random drug test, claimant submitted a urine sample that was tested and on September 1, 2015, the medical review officer confirmed a positive drug test result for marijuana. Employer Exhibit One. Claimant was notified of the confirmed positive drug test result.

The employer has met the requirements of Iowa Code § 730.5 because the claimant received a copy of employer's drug and alcohol use policy, a third party used a computer that randomly selected claimant from a pool of employees, claimant's sample was tested at a certified testing facility as a result of the random test, the drug screen was positive for marijuana, claimant was notified by certified mail, return receipt requested, and offered a split screen sample, and claimant did not request a second test of the split sample. Employer Exhibit One. Employees are required to be drug free in the workplace. Employer Exhibit One. The violation of the known work rule constitutes misconduct. Benefits are denied.

DECISION:

The December 3, 2015, (reference 01) unemployment insurance decision is affirmed. Claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Jeremy Peterson
Administrative Law Judge

Decision Dated and Mailed

jp/pjs