IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

CHAD S JONES Claimant **METOKOTE CORPORATION** Employer	**APPEAL 15A-UI-12376-JP-T** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 10/18/15** **Claimant: Appellant (2)**

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant filed an appeal from the November 6, 2015 (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on November 24, 2015. Claimant participated and Jeff Jones participated on behalf of claimant. Employer did not participate.

ISSUE:

Did claimant voluntarily leave the employment with good cause attributable to employer or did employer discharge claimant for reasons related to job misconduct sufficient to warrant a denial of benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a material handler from May 11, 2015 and was separated from employment on October 19, 2015; when he was discharged.

On October 14, 2015, claimant damaged the forklift he was operating when he raised it up and struck something. The damage to the forklift may have exceeded $1,000. On October 15, 2015, the employer told claimant to go to the hospital next to the plant and give a urine sample to be tested for drugs and alcohol because of the accident that occurred the day before. Claimant gave a sample in a sanitary and private area. The hospital split the sample into two separate containers. The sample was sent to a lab where the first sample resulted in a confirmed a positive test for marijuana. On October 19, 2015, claimant was contacted by the doctor and told of the positive certified results. Claimant was not notified by certified mail from the employer of the test results. Claimant never received a copy of the test results. The employer did offer claimant to give a new sample to test but he was never offered to have the second container of the first sample tested. The employer does have a drug free area policy. On October 19, 2015, claimant was called into the office. The employer gave claimant the option to either quit or be fired because of the positive test result. Claimant chose to resign from the employer so his employment record would not show he was discharged for a positive drug test result.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant did not quit but was discharged from employment for no disqualifying reason.

Iowa Code § 96.5-1 provides:

> An individual shall be disqualified for benefits:
>
> 1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

Iowa Admin. Code r. 871-24.26(21) provides:

> Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:
>
> (21) The claimant was compelled to resign when given the choice of resigning or being discharged. This shall not be considered a voluntary leaving.

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).

A voluntary quitting means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer and requires an intention to terminate the employment. *Wills v. Emp't Appeal Bd.*, 447 N.W. 2d 137, 138 (Iowa 1989); *see also* Iowa Admin. Code r. 871-24.25(35). A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980). Where a claimant walked off the job without permission before the end of his shift saying he wanted a meeting with management the next day, the Iowa Court of Appeals ruled this was not a voluntary quit because the claimant's expressed desire to meet with management was evidence that he wished to maintain the employment relationship. Such cases must be analyzed as a discharge from employment. *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992).

On October 19, 2015, the employer initiated the communication with claimant regarding his positive drug test result. The employer told claimant he had two options, he could resign from the employer or the employer was going to discharge him because of the positive drug test result. Claimant chose to resign. Claimant never saw a copy of the confirmed positive test result. Claimant did not intend to quit on October 19, 2015; however, the employer did tell claimant he would be discharged if he did not quit. Therefore, claimant is considered to have been discharged from employment.

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988).

In an at-will employment environment an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, it incurs potential liability for unemployment insurance benefits related to that separation. A violation is not necessarily disqualifying misconduct even if the employer was fully within its rights to impose discipline up to or including discharge for the incident under its policy.

Iowa Code § 730.5 allows drug testing of an employee upon "reasonable suspicion" if there is property damage that exceeds $1,000.00. On October 14, 2015, Claimant damaged a forklift he was operating and the damage may have exceeded $1,000.00. Iowa Code § 730.5(9) requires that a written drug screen policy be provided to every employee subject to testing. Claimant testified the employer did have a drug free area policy. On October 15, 2015, the day after the accident, the employer requested claimant to provide a urine sample for drug and alcohol testing. Claimant provided the sample. On October 19, 2015, claimant was notified by the

doctor of the confirmed positive drug test result for marijuana. However, Iowa Code § 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 return receipt requested, and the right to obtain a confirmatory or split-sample test before taking disciplinary action against an employee. The employer never notified claimant of the confirmed positive drug test result by certified mail return receipt requested. The employer may have notified him in person on October 19, 2015; however, Iowa Code § 730.5(7)(i)(1) strictly mandates that the employer notified claimant by certified mail return receipt requested. Furthermore, claimant never received a copy of the confirmed positive drug test result. 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 Emp't Appeal Bd.*, 602 N.W.2d 553, 557, 558 (Iowa 1999). Clearly the employer was relying on the positive drug test despite the employer not following the strict rules required in notifying claimant of the positive drug test result.

While the employer certainly may have been within its rights to test and fire the claimant, it failed to provide him sufficient notice of the test results according to the strict and explicit statutory requirements. Thus, the employer cannot use the results of the drug screen as a basis for disqualification from benefits. The employer failed to meet its burden of proof in establishing job disqualifying misconduct. Benefits are allowed.

DECISION:

The November 6, 2015 (reference 01) decision is reversed. Claimant did not quit but was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible. Any benefits claimed and withheld shall be paid to claimant.

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Jeremy Peterson
Administrative Law Judge

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Decision Dated and Mailed

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