

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**THEODORE SCHNEIDERS**  
Claimant

**APPEAL NO: 12A-UI-11138-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MIDAMERICAN ENERGY COMPANY**  
Employer

**OC: 08/19/12**  
**Claimant: Appellant (1)**

Iowa Code § 96.5-2-a - Discharge for Misconduct

**STATEMENT OF THE CASE:**

Theodore Schneiders (claimant) appealed an unemployment insurance decision dated September 10, 2012, reference 01, which held that he was not eligible for unemployment insurance benefits because he was discharged from MidAmerican Energy Company (employer) for work-related misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on November 5, 2012. The claimant participated in the hearing with Attorney Jay Smith. The employer participated through Burt Short, Senior Labor and Employee Relations Representative; Paige Norris, Human Resources Analyst; and Attorney Peg Roy. Employer's Exhibits One through Three and Claimant's Exhibit A were admitted into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

The issue is whether the employer discharged the claimant for work-related misconduct.

**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 employed as a full-time fuel handling technician from November 29, 1989 through August 15, 2012 when he was discharged for violation of the employer's drug and alcohol policy. The employer has a written drug policy that informs employees of the drug testing procedures and for which drugs the employer will be testing. The policy provides that a diluted urine specimen is treated as a positive drug test. The claimant was chosen on a random basis by a third party for a drug test to be performed on August 6, 2012. He was given the opportunity to inform the medical review officer of any drugs he was taking that might have an effect on the outcome of the test.

The claimant tested positive for marijuana and provided a diluted sample. The employer sent him a termination letter dated August 9, 2012. The claimant signed for receipt of the certified letter on August 10, 2012. The employer advised him of the positive result and of his right to obtain a confirmatory test of the secondary sample that was taken at the time of the initial test.

The claimant had seven days to contact the employer to proceed with the confirmatory test but failed to do so. The employer subsequently sent him a final termination letter dated August 15, 2012.

### **REASONING AND CONCLUSIONS OF LAW:**

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a.

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 employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The claimant was discharged for violation of the employer's drug and alcohol policy due to his positive drug test for marijuana. Iowa Code § 730.5 sets forth the rules by which a private company may screen its employees for use of illegal drugs. The employer has a written drug testing policy per Iowa Code § 730.5(9)(b) and tested the claimant on a random basis. The claimant was advised of the drugs to be tested and was given the opportunity to advise the medical review officer of any drugs he was taking that might have affected the outcome. Iowa Code § 730.5(7)(c)(2). The test was performed during the workday at St Luke's Center and split samples were taken at the time of collection. Iowa

Code §§ 730.5(6) and (7)(a-c). A medical review officer reviewed and interpreted the confirmed positive test result. Iowa Code § 730.5(7)(g).

The claimant was notified by regular mail and by certified mail, return receipt requested of the positive result and his right to obtain a confirmatory test of the secondary sample. Iowa Code § 730.5(7)(i)(1) and (2). He was advised if he wanted to proceed to test the secondary sample, he needed to notify the drug testing administrator within seven days from the date of the letter. This was not done and the claimant was terminated as of August 15, 2012. The employer has met the requirements of Iowa Code § 730.5. Work-connected misconduct has been established in this case and benefits are denied.

**DECISION:**

The unemployment insurance decision dated September 10, 2012, reference 01, is affirmed. The claimant is not eligible to receive unemployment insurance benefits because he was discharged from work for misconduct. Benefits are withheld until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

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Susan D. Ackerman  
Administrative Law Judge

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Decision Dated and Mailed

sda/pjs