

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CARL GROVER**  
Claimant

**APPEAL NO: 11A-UI-08959-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**AADG INC/CURRIES-GRAHAM**  
Employer

**OC: 05/29/11**  
**Claimant: Appellant (1)**

Iowa Code § 96.5-2-a - Discharge for Misconduct  
871 IAC 24.32 (9) - Suspension/Disciplinary Layoff

**STATEMENT OF THE CASE:**

Carl Grover (claimant) appealed an unemployment insurance decision dated July 1, 2011, reference 02, which held that he was not eligible for unemployment insurance benefits because he was discharged from Curries-Graham (employer) for work-related misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 22, 2011. The claimant participated in the hearing. The employer participated through Mark Evers, Director of Human Resources and Jeff Neuwohner, Safety Manager. Claimant's Exhibits A, B, and C 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 suspended 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 production employee from April 23, 1995 through May 26, 2011 when he was suspended for a positive drug test. 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 claimant was chosen for a drug test based on reasonable suspicion when it was reported that he was arrested for the possession of drugs on May 25, 2011. The claimant tested positive for marijuana. He was notified by certified mail, return receipt requested, of the positive result and his right to obtain a confirmatory test of the secondary sample that was taken at the time of the initial test.

The claimant did not have the split sample retested because he had been using marijuana. Pursuant to company policy, he sought treatment from a substance abuse counselor and complied with the prescribed treatment. The claimant returned to work on June 23, 2011 after a subsequent drug test came back negative.

## REASONING AND CONCLUSIONS OF LAW:

The issue to be determined in this matter is whether the claimant's disciplinary suspension and subsequent termination were for disqualifying reasons. When an individual is unemployed as a result of a disciplinary suspension imposed by the employer, the individual is considered to have been discharged and the issue of misconduct must be resolved. See 871 IAC 24.32(9). An individual who was discharged or suspended for misconduct is disqualified from receiving job insurance benefits. See Iowa Code § 96.5-2-a. Misconduct is defined as deliberate actions contrary to the employer's interest. See 871 IAC 24.32(1).

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.

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 suspended 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. In order for a violation of an employer's drug or alcohol policy to be disqualifying misconduct, it must be based on a drug test performed in compliance with Iowa's drug testing laws. Eaton v. Iowa Employment Appeal Board, 602 N.W.2d 553, 558 (Iowa 1999). The Eaton court said, "It would be contrary to the spirit of chapter 730 to allow an employer to benefit from an unauthorized drug test by relying on it as a basis to disqualify an employee from unemployment compensation benefits." Eaton, 602 N.W.2d at 558.

The employer has a written drug testing policy per Iowa Code § 730.5(9)(b) and tested the claimant based on a reasonable suspicion of drug use. The employer's drug policy defines reasonable suspicion as evidence based on "objective and articulable facts" which in the case herein, resulted from a report of the claimant's arrest for use of drugs. The claimant was notified 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). The employer has met the requirements of Iowa Code § 730.5. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

**DECISION:**

The unemployment insurance decision dated July 1, 2011, reference 02, is affirmed. The claimant is not eligible to receive unemployment insurance benefits because he was suspended 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

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