

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

---

**ANGELA ENO**  
Claimant

**BRAND ENERGY SOLUTIONS LLC**  
Employer

**APPEAL 20A-UI-03327-CL-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 01/05/20**  
**Claimant: Appellant (2)**

---

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

**STATEMENT OF THE CASE:**

On April 17, 2020, the claimant filed an appeal from the April 7, 2020, (reference 02) unemployment insurance decision that denied benefits based on a separation from employment. The parties were properly notified about the hearing. A telephone hearing was held on May 13, 2020. Claimant participated. Employer participated through account manager Chad Guidry and was represented by Kenneth Pess. Employer's Exhibit 1 was received.

**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: Employer has a drug and alcohol policy that provides for pre-employment drug and alcohol testing. Claimant was aware of the policy.

Claimant began working for employer in the beginning of August 2019. Claimant last worked as a full-time administrative assistant/helper. Employer was slow at the end of the year and laid claimant off during the first week of January. Employer recalled claimant to return in the first week of February 2020. Claimant was required to pass a drug screen before returning to work.

On February 5, 2020, claimant gave a urine sample at MercyOne Urgent Care in Clinton, Iowa. The sample tested positive for methamphetamine.

On February 13, 2020, claimant's supervisor called her and told her that she was terminated because of the positive drug screen. The supervisor followed up by sending an email regarding the results of the drug screen.

Employer did not offer claimant the opportunity to have the split sample of the urine specimen tested or provide claimant notice of the results of the test by certified mail, return receipt requested.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

Iowa Code § 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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.

The employer has the burden of proving disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). Whether an employee violated an employer's policies is a different issue from whether the employee is disqualified for misconduct for purposes of unemployment insurance benefits. See *Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661, 665 (Iowa 2000) ("Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of benefits." (Quoting *Reigelsberger*, 500 N.W.2d at 66.)).

Iowa Code section 730.5(4) allows private employers to test employees for drugs and/or alcohol but requires the employer to "adhere to the requirements . . . concerning the conduct of such testing and the use and disposition of the results."

Iowa Code section 730.5(7)(i)(1) mandates that if a medical review officer (MRO) reports a positive test result to the employer, upon a confirmed positive drug or alcohol test by a certified

laboratory, the employer must 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 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).

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.

While the employer certainly may have been within its rights to test and fire the claimant, it failed to provide her sufficient notice of the test results and opportunity for a split sample test 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.

**DECISION:**

The April 7, 2020, (reference 02) unemployment insurance decision is reversed. Claimant was discharged from employment due to job-related misconduct. Benefits are allowed, provided she is otherwise eligible.



---

Christine A. Louis  
Administrative Law Judge  
Unemployment Insurance Appeals Bureau  
1000 East Grand Avenue  
Des Moines, Iowa 50319-0209  
Fax (515)478-3528

May 15, 2020  
Decision Dated and Mailed

cal/scn