

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ISAAC THOMAS
Claimant

APPEAL NO. 13A-UI-08448-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SCHENKER LOGISTICS INC
Employer

OC: 10/14/12
Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Claimant filed a timely appeal from a representative's decision dated July 12, 2013, reference 04, which denied unemployment insurance benefits. After due notice was provided, a telephone hearing was held on Monday, August 26, 2013. The claimant participated. The employer participated by Ms. Nicki Brick, Human Resource Manager. Employer's Exhibits A, B, C and D were received into evidence.

ISSUE:

The issue in this matter is whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Isaac Thomas was employed by Schenker Logistics from January 7, 2013 until June 14, 2013. Mr. Thomas was employed as a full-time forklift operator and was paid by the hour.

Pursuant to the company's written drug testing policy, Mr. Thomas was randomly chosen to undergo drug testing on June 13, 2013. The testing was done in compliance with Iowa Code section 730.5. Prior to the employer being notified of the positive drug test, the claimant was contacted by the testing facility's medical review officer to determine if there were any other reasons associated with the claimant's failure to pass the drug screen. The claimant was notified of his failure to pass the drug screen due to the presence of marijuana in his system by certified letter, return receipt requested that was delivered to the claimant by the employer. The claimant was also informed at that time that he could have the split sample tested and if the split sample testing showed that the claimant had successfully passed the drug screen, the employer would reimburse the claimant for any additional fees.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits. It does.

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 of proof in this matter. See Iowa Code section 96.6-2. Misconduct must be substantial in order to justify a denial of unemployment insurance benefits. The focus is on deliberate, intentional or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

Iowa Code section 730.5 provides the authority under which a private sector employer doing business in Iowa may conduct drug or alcohol testing of employees.

In the case at hand the claimant was randomly chosen to undergo drug testing and was discharged after he failed the drug test. The drug test and the manner of its administration were in compliance with Iowa Code section 730.5.

Prior to the drug testing results being announced, the claimant was contacted by a medical review officer for the testing laboratory to determine that nothing else had skewed the test result reports.

For the reasons stated herein the administrative law judge concludes that the employer has met its burden of proof in establishing disqualifying misconduct on the part of Mr. Thomas. Benefits are denied.

DECISION:

The representative's decision dated July 12, 2013, reference 04, is affirmed. The claimant is disqualified. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount and is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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