

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

ROBERTO ZAMORA
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Appeal Number: 05A-UI-12113-CT
OC: 10/30/05 R: 04
Claimant: Respondent (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Moulded Fibre Technology filed an appeal from a representative's decision dated November 21, 2005, reference 01, which held that no disqualification would be imposed regarding Roberto Zamora's separation from employment. After due notice was issued, a hearing was held by telephone on December 15, 2005. Mr. Zamora participated personally and offered additional testimony from Andrew Abbadusky. The employer participated by Deb Geronzin, Office Manager, and Darrell Rollerson, General Manager. The employer was represented by Jonathan Bell of Unemployment Tax Management Corporation. Exhibits One and Three were admitted on the employer's behalf.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Zamora began working for Moulded Fibre Technology on October 11, 2004 as a full-time pulper. His job involved loading newspaper onto a conveyor and mixing it with ink in tanks. On October 31, 2005, he sustained an injury at work and, therefore, was required to undergo drug screening. The results, received by the employer on November 2, indicated the presence of cocaine metabolites.

The employer met with Mr. Zamora on November 3 concerning the drug test results. He denied having used cocaine but did indicate that he had been around others who were using. He was at that time provided a letter that informed him of his right to have a split of the original urine sample retested at his expense. The letter indicated that he had to exercise the right within three days of the letter. The letter did not specify the costs of such testing. Mr. Zamora was not sent any information by certified mail, return receipt requested. He initially indicated to Deb Geronzin that he would undergo the re-testing but later changed his mind. The positive drug test results were the sole reason for Mr. Zamora's discharge.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Zamora was separated from employment for any disqualifying reason. An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Mr. Zamora was discharged after he tested positive for cocaine following an injury at work. Drug test results can form the basis of a misconduct disqualification only if the testing conformed to the requirements of Iowa Code section 730.5.

Iowa Code section 730.5 dictates not only the manner in which the actual testing is performed but also post-testing requirements. Section 730.5(7)i requires that the employer give notice of the drug test results by certified mail, return receipt requested. In the case at hand, Mr. Zamora was given his notice in person. The fact that the letter was delivered to him by hand rather than certified mail is not a fatal flaw inasmuch as he acknowledged receipt of the letter. However, the law allows him seven days in which to decide if he will undergo re-testing. The employer's letter advised that he had only three days in which to make that determination. The law also requires that the notice tell the employee the fee he has to pay to the employer as reimbursement for fees incurred in re-testing. The employer's letter to Mr. Zamora did not mention any fees for re-testing.

The employer's notice to Mr. Zamora of his right to have a re-test did not conform to the standards established by law. He was entitled to the full amount of time allowed by law to determine if he would undergo re-testing. He also had the right to know what it would cost him to have the re-test conducted. The administrative law judge concludes that Mr. Zamora was not given sufficient information on which to make an informed decision regarding re-testing. Although his explanation regarding the presence of drugs in his system may not have appeared to be credible, he still was entitled to have re-testing if he so chose. Moreover, the re-test would have been conducted using a different chemical process than used in the initial screen. See Iowa Code section 730.5(7(f)1. Therefore, the results on the re-test could conceivably have been different.

After considering all of the evidence, the administrative law judge concludes that the employer's failure to provide Mr. Zamora with the post-testing information required by law prevents using the positive test results as a basis for disqualification from job insurance benefits. Accordingly, benefits are allowed.

DECISION:

The representative's decision dated November 21, 2005, reference 01, is hereby affirmed. Mr. Zamora was discharged, but misconduct has not been established. Benefits are allowed, provided he satisfies all other conditions of eligibility.

cfc/kjw