

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CLAIMANT**

**APPEAL NO: 14A-UI-03351-ET**

**EMPLOYER**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 02/23/13  
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the March 17, 2014, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on April 21, 2014 and continued on May 7, 2014. The claimant participated in the hearing with his union steward. The employer participated in the hearing. Employer's Exhibits One through Seven and Claimant's Exhibits A and B were admitted into evidence.

The reasoning and conclusions of law section of this decision explain the confidentiality issue involving federal drug testing information. By the undersigned signature on this decision, the Administrative Law Judge stipulates that the drug test information submitted in this case will only be made available to the parties to the proceeding in compliance with 49 USC section 31306(c)(7), which requires that test results and medical information of employees under the Omnibus Transportation Employee Testing Act of 1991 remain confidential. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following finding of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

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

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time driver for the employer from January 31, 2005 to February 20, 2014. He was discharged after testing positive for methamphetamine following an accident that caused an estimated \$100,000.00 damage to the semi and trailer.

The claimant usually worked from 2:00 or 4:00 p.m. to 12:00 a.m. On January 23, 2014, between 11:00 and 11:30 p.m. he was involved in a one vehicle accident where he hit a highway median, overcorrected and then rolled the semi, leaving it on its side blocking traffic. There was extensive damage to the tractor and trailer and the claimant was taken by ambulance to the hospital, where he was treated and released.

While in the emergency room, a register nurse secured a urine specimen from the claimant and split the sample according to federal DOT requirements. The nurse collected the sample at 2:50 a.m. January 24, 2014. She followed all of the regulations but did not have a Federal Drug Testing Custody and Control Form at her site and consequently she used a "NONDOT Custody and Control Form" (Employer's Exhibit One). The test results were received by the certified laboratory January 25, 2014, and processed by the lab January 27, 2014. The medical review officer (MRO) received the results of the claimant's test February 6, 2014, and noted the claimant tested positive for methamphetamine. Later that day, the MRO contacted the claimant and asked him if he was taking prescription or over the counter medication that could cause a false positive test. The claimant stated he had been experiencing a sinus infection and had taken over the counter medication for that condition but the MRO told him that those medications could not result in a positive test for methamphetamine. The MRO offered the claimant the opportunity to have his split sample tested and the claimant indicated he wanted to proceed with a test of the split sample, which occurred February 17, 2014. The MRO received the test results, also positive for methamphetamine, February 17, 2014, and contacted the claimant and the employer. The claimant attempted to return to work with a full release following the accident but after meeting with him the employer notified the claimant he could not come back to his previous job until the positive drug test issue was resolved by the employer. The employer reviewed the situation and sent the claimant two certified letters, return receipt requested, February 20, 2014 (Employer's Exhibit Five). The first letter explained the employer tried to call him at the two phone numbers it had listed for him but the claimant did not answer at either number. The employer left messages for the claimant to return its call but when it did not hear from him, the employer proceeded to mail a copy of the claimant's termination of employment due to a positive drug test.

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

The first issue to be determined in this case is the effect of the confidentiality requirements of the federal law. The Omnibus Transportation Employee Testing Act of 1991 authorized the United States Department of Transportation (DOT) to prescribe regulations for testing of commercial motor vehicle operators. 49 USC section 31306. Congress required that the regulations provide for "the confidentiality of test results and medical information" of employees tested under the law. 49 USC section 31306(c)(7). Pursuant to this grant of rulemaking authority, the DOT established confidentiality provisions in 49 CFR 40.321 that prohibit the release of individual test results or medical information about an employee to third parties without the employee's written consent. There is an exception, however, to that rule for administrative proceedings (e.g. unemployment compensation hearings) involving an employee who has tested positive under a DOT drug or alcohol test. 49 CFR 40.323(a)(1). The exception allows an employer to release the information to the decision maker in such a proceeding, provided the decision maker issues a binding stipulation that the information released will only be made available to the parties to the proceeding. 49 CFR 40.323(b). In the statement of the case, a stipulation in compliance with the regulation has been entered, which corrects the failure of the employer to obtain the stipulation before submitting the information to the appeals bureau.

The federal confidentiality provision must be followed despite conflicting provisions of the Iowa Open Records Act (Iowa Code chapter 22), the Iowa Administrative Procedure Act (APA) (Iowa Code chapter 17A), and Iowa Employment Security Law (Iowa Code chapter 96). Iowa Code section 22.2-1 provides: "Every person shall have the right to examine and copy a public record." The exhibits, decision, and digital recording in an unemployment insurance case would meet the definition of "public record" under Iowa Code section 22.1-3. Iowa Code

section 17A.12-7 provides that contested case hearings “shall be open to the public.” Under Iowa Code section 96.6-3, unemployment insurance appeals hearings are to be conducted pursuant to the provisions of Chapter 17A. The unemployment insurance rules provide that copies of all presiding officer decisions shall be kept on file for public inspection at the administrative office of the Department of Workforce Development. 871 IAC 26.17(3).

The federal confidentiality laws regarding drug testing must be followed because, under the Supremacy Clause, U.S. Const., Art. VI, cl. 2, state laws that “interfere with, or are contrary to the laws of congress, made in pursuance of the constitution” are invalid. Wisconsin Public Intervenor v. Mortier, 501 U.S. 597, 604 (1991). One way that federal law may pre-empt state law is when state and federal law actually conflict. Such a conflict arises when “compliance with both federal and state regulations is a physical impossibility or when a state law “stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.” Id. At 605. Although the general principle of confidentiality is set forth in a federal statute (49 USC section 31306(c)(7), the specific implementation requirements are spelled out in the federal regulations have no less preemptive effect than federal statutes.” Capital Cities Cable, Inc. v. Crisp, 467 U.S. 691, 699 (1984) (ruling that federal regulation of cable television pre-empted Oklahoma law restricting liquor advertising on cable television, and Oklahoma law conflicted with specific federal regulations and was an obstacle to Congress’ objectives).

In this case, the Iowa Open Records law, APA, and Employment Security law actually conflict with the federal statute 49 USC section 31306(c)(7) and the implementing regulations 49 CFR 40.321 to the extent that they would require the release of individual test results or medical information about an employee to third parties beyond the claimant, employer, and the decision maker in this case. It would defeat the purpose of the federal law of providing confidentiality to permit the information regarding the test results to be disclosed to the general public. Since the decision to discharge the claimant was based on his testing positive on a DOT drug test, it would be impossible to issue a public decision identifying the claimant without disclosing the drug test results. Therefore, the public decision in this case will be issued to the parties, but that decision, the exhibits, and the digital record (all of which contain confidential information) shall be sealed and not publicly disclosed.

The next issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

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 methamphetamines on January 24, 2014. Iowa Code section 730.5 sets forth the rules by which a private company may screen its employees for use of illegal drugs. However, when a drug test administered to a claimant pursuant to Federal law, the Iowa drug testing policy at Iowa Code section 730.5 does not apply. See Iowa Code section 730.5(2) and 49 C.F.R. 382, 109 for Federal rules preempting state rules if compliance with the state requirement is an obstacle to the accomplishment and execution of the requirements of the Federal rules. Iowa Code section 730.5 has stricter requirements for a drug test than the Federal rules at 49 C.F.R. Subtitle A, Part 40. In the case herein, the claimant was a driver with a commercial driver's license, which is a position subject to Federal Department of Transportation drug testing guidelines. The employer complied with the federal drug testing regulations. A preponderance of the evidence establishes the claimant violated the employer's drug policy. The claimant's violation of the employer's drug policy shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. The employer discharged the claimant for disqualifying job misconduct. Therefore, benefits are denied.

The employer's contract and at least one appendix to the contract contradict each other. The contract states, "no warning notice need be given to an employee before he is discharged if the cause of such discharge is...or being under the influence of or in the possession of illegal drugs, or the illegal use of dangerous drugs while on duty, or recklessness resulting in serious accident while on duty" (Employer's Exhibit Four). Appendix A to the contract says, in pertinent part, "Current employees receiving a confirmed positive report on a drug or alcohol test shall be entitled, if the employee has not previously violated this policy and if the employee agrees to the

treatment, to enroll in an (employer) approved or provided rehabilitation, treatment or counseling program...Participation in and successful completion of the drug and/or alcohol treatment program is a condition of continued employment with (the employer)” (Claimant’s Exhibit A). The employer argues the contract supersedes Appendix A with respect to the penalties for a positive drug test. The claimant maintains Appendix A is controlling as it was agreed to after the contract was in place and is meant to address issues that arise when there is either a change in policy, a new policy put in place that was not covered in the original agreement, or an issue not contemplated in the original contract. The claimant argues that after proceeding through the grievance process he won his case and it was determined he should be reinstated with back pay. The employer has not accepted that ruling to date and is in the process of making a decision about whether to take the issue to district court. While the claimant’s argument is persuasive, administrative law judges in unemployment insurance benefit cases are not bound by employers’ contracts and policies but must make a determination based on the facts and the law. In this case, even if the administrative law judge agrees with the claimant’s interpretation of the contract and Appendix A, because the employer’s policies and the parties contracts and appendixes are not a relevant factor in making a decision on eligibility for unemployment insurance benefits, the question of whether the contract and Appendix A contradict each other, with one interpretation resulting in the claimant being reinstated to his position with back pay while another reading of the contract would result in his termination from employment, the administrative law judge could not consider those factors or address those issues in making the decision of whether the claimant is eligible for unemployment insurance benefits.

**DECISION:**

The March 17, 2014, reference 01, decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as 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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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

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