

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ADAM G GOODRICH**  
Claimant

**APPEAL NO. 09A-UI-18083-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**AEC ENTERPRISES INC**  
Employer

**Original Claim: 11/08/09  
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Adam Goodrich filed a timely appeal from a representative's decision dated November 30, 2009, reference 01, that denied benefits upon a finding the claimant was discharged for being intoxicated on the job. After due notice was issued, a telephone conference hearing was scheduled for and held on January 4, 2010. The claimant participated personally. Participating as a witness for the claimant was Mr. Eric Marvin, former coworker. The employer participated by Ms. Sandy Van Veen, office manager.

**ISSUE:**

At issue is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

**FINDINGS OF FACT:**

Having considered the evidence in the record, the administrative law judge finds: Adam Goodrich was most recently employed by AEC Enterprises Inc. from May 17, 2006, until November 6, 2009, when he was discharged from employment. Mr. Goodrich held the position of full-time production worker and was paid by the hour.

Mr. Goodrich was discharged after testing positive for marijuana metabolites following a drug screen that had been given to the claimant as a random follow-up test. Mr. Goodrich had previously failed a drug screen that had been given to him by the company. The drug test was issued to the claimant on November 3, 2009. Six days had elapsed between the claimant's first and second test. The claimant's name was drawn for a "random test" by the company placing the names of employees in a "hat" for drawing.

The claimant was informed of the positive test results by his supervisor. Although the claimant had provided a home telephone number and a trac phone telephone number, the claimant was not contacted by a medical review officer to discuss the positive test or factors that may have affected the test's outcome.

## REASONING AND CONCLUSIONS OF LAW:

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 benefits. Misconduct that may be serious enough to warrant the discharge of an employee may not be necessarily serious enough to warrant the denial of unemployment benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). 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 App. 1992).

Allegations of misconduct without additional evidence shall be insufficient to result in disqualification. If the employer fails to furnish available evidence to corroborate the allegation, misconduct cannot be established. See 871 IAC 24.32(4). When it is in a party's power to produce more direct and satisfactory evidence than is actually produced, it may fairly be inferred that the more direct evidence will expose deficiencies in that party's case. See Crosser v. Iowa Department of Public Safety, 240 N.W.2d 682 (Iowa 1976). The Iowa Code provides and limits the authority under which a private sector employer doing business in Iowa may conduct drug or alcohol testing of employees. In Eaton v. Iowa Employment Appeal Board, 602 N.W.2d 553 (Iowa 1999) the Supreme Court of Iowa considered the statute and held "that an illegal drug test cannot provide a basis to render an employee ineligible of unemployment compensation

benefits. Thereafter, in Harrison v. Employment Appeal Board, 659 N.W.2d 581 (Iowa 2003), the Supreme Court held where an employer had not complied with the statutory requirements, the test could not serve as a basis for disqualifying a claimant for benefits.

Iowa Code section 730.5(8) allows random drug testing of employees, provided the employer complies with the outlined selection process. The statute allows testing of employees during or after completion of drug or alcohol rehabilitation. Section 730.5(1)k provides that in random testing, persons for testing must be selected by a computer-based random number generator process by an independent entity. Section 730.5(7)i(1) requires that the claimant be informed in writing of his right to have a second confirmatory test done, the right to choose the laboratory to conduct the test, and seven days for the employee to make the decision.

Section 730.5(7)i(1) and (2) requires that if a confirmed positive result is received by the employer, the employer must notify the employee by certified mail return receipt requested of the results of the test and the employee's right to obtain a confirmatory test of the secondary sample. Section 730.5(9) requires that the policy be written and that uniform standards be set for action to be taken in the case of confirmed positive test results.

Section 730.5(7)c(2) of the Iowa Code requires that the claimant be offered an opportunity to provide information that might affect test results to a medical review officer after initial positive results are obtained.

As the evidence in the record establishes, the employer has not complied with the statutory requirements under which a private sector employer doing business in Iowa may conduct drug or alcohol testing of employees. The test cannot be used to serve as a basis for disqualifying the claimant for benefits. Based upon the facts of this case and the application of the appropriate law, the administrative law judge concludes that Mr. Goodrich was discharged for no disqualifying reason. Accordingly, Mr. Goodrich is eligible for benefits, provided he meets all other eligibility requirements of Iowa law.

**DECISION:**

The representative's decision dated November 30, 2009, reference 01, is reversed. The claimant was discharged for no disqualifying reason. The claimant is eligible for benefits, provided he meets all other eligibility requirements of Iowa law.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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