

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DEBRA J KEPHART**  
Claimant

**APPEAL NO. 10A-UI-13652-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MOSAIC**  
Employer

**Original Claim: 08/29/10  
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from a representative's decision dated September 24, 2010, reference 01, that denied benefits based upon the claimant's separation from Mosaic. After due notice was issued, a telephone hearing was held on November 2, 2010. The claimant participated personally. The employer participated by Blake Richards, hearing representative, and witnesses Mary Arndt, Linda Morrison, and Jim Poehlman. Employer's Exhibits One through Four were received into evidence.

**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: Debra Kephart was employed by Mosaic from February 17, 2000, until September 1, 2010, when she was discharged for refusing to take a drug screen. Ms. Kephart worked as a full-time direct support associate providing residential care to developmentally challenged individuals in a group setting.

On July 1, 2010, the organization's associate director, Mary Arndt, received a telephone call from a guardian of one of the adolescents at the group home where Ms. Kephart was employed. The guardian made assertions that the associate director felt were credible, asserting that Ms. Kephart may have engaged in the practice of taking controlled substances. The guardian threatened to remove his ward from the group home if the employer chose not to test Ms. Kephart for the use of controlled substances.

Ms. Arndt and Ms. Morrison, the direct support manager, visited the facility that evening. The claimant was informed of the requirement that she undergo drug testing and the reason for it. The employer initially offered to allow the sample to be taken at the residential home but later agreed that the testing would take place at a certified testing facility.

After considering the matter and visiting with her husband by telephone, Ms. Kephart declined to take the drug test, although she was reminded that failure to do so would result in her loss of employment. The claimant was suspended at that time pending a management decision on her subsequent discharge.

It is the claimant's position that she chose to quit her employment when informed of the required drug testing although she has not engaged in the taking of controlled substances.

Mosaic has a written drug policy. Included in the policy is a provision informing employees that they are subject to discharge for test refusal.

### **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 serious enough to warrant the discharge of an employee may not necessarily be 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).

Iowa Code section 730.5 provides the authority under which private sector employers doing business in Iowa may conduct drug or alcohol testing. 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 the basis to render an employee ineligible for unemployment compensation benefits.” Thereafter in Harrison v. Employment Appeal Board, 659 N.W.2d 581 (Iowa 2003), the Supreme Court of Iowa held that where the employer had not complied with the statutory requirements of the drug test, the test could not serve as a basis for disqualifying a claimant for benefits. In the present case, the employer had reasonable suspicion to request drug testing. The employer explained the necessity of the drug testing to the claimant, offering to provide the claimant a ride to an official testing site for the collection of the sample and subsequent testing. Although the claimant knew or should have known, based upon the employer’s written policy, that a drug test refusal would result in termination from employment, she nonetheless refused. Based upon her refusal to take the drug test, Ms. Kephart was discharged from employment.

Although the administrative law judge is aware that Ms. Kephart maintains that she subsequently quit her job after being suspended, the administrative law judge notes that 871 IAC 24.32(9) provides that if a claimant’s unemployment is a result of a disciplinary suspension imposed by the employer, the claimant is considered as discharged and the issue to be resolved is whether the claimant engaged in job-connected misconduct.

The claimant’s refusal to be tested was a violation of the company’s written drug policy and Ms. Kephart knew or should have know that her refusal would result in termination from employment. Benefits are withheld.

**DECISION:**

The representative’s decision dated September 24, 2010, reference 01, 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 her weekly benefit amount, provided she is otherwise eligible.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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