

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**ROBERT J LUCAS**  
Claimant

**ALLSTEEL INC**  
Employer

**APPEAL 15A-UI-06829-H2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 05/10/15**  
**Claimant: Appellant (2)**

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Iowa Code § 96.5(2)a – Discharge/Misconduct  
Iowa Code § 96.4(3) – Able and Available

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the June 4, 2015, (reference 02) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on July 21, 2015. Claimant participated. Employer participated through Emily Bennett, member and community relations business partner and was represented by Denise Norman of Employer's Edge. Employer's Exhibits One through Three were entered and received into the record. Claimant's Exhibit A was entered and received into the record.

**ISSUE:**

Was the claimant placed on a leave of absence for job connected misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a utility worker beginning on January 20, 2014 through date of hearing as he remains employed. The claimant was given a random drug test via a mouth swab on April 21, 2015. His swab tested positive for marijuana. He was notified of his test results in person on April 27 and placed on leave through May 20. He was sent for screening which he completed and returned to work the week of May 20. The claimant had been given a copy of the employer's drug and alcohol policy. The claimant was not tested under the federal department of transportation regulation, but pursuant to Iowa State law testing.

**REASONINGS AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was placed on leave or suspension from employment for no disqualifying reason.

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 of proving disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982).

Iowa Code § 730.5 allows drug testing of an employee if, among other conditions, the employer has "probable cause to believe that an employee's faculties are impaired on the job." Upon a positive drug screen, Iowa Code § 730.5(3)(f) requires that an employer offer substance abuse evaluation and treatment to an employee the first time the employee has a positive drug test. Iowa Code § 730.5(9) requires that a written drug screen policy be provided to every employee subject to testing. Iowa Code § 730.5(7)(i)(1) mandates that an employer, upon a confirmed positive drug or alcohol test by a certified laboratory, **notify the employee of the test results by certified mail** and the right to obtain a confirmatory test before taking disciplinary action against an employee. Upon a positive drug screen, Iowa Code § 730.5(9)(g) requires, under certain circumstances, that an employer offer substance abuse evaluation and treatment to an employee the first time the employee has a positive drug test. The Iowa Supreme Court has held that an employer may not "benefit from an unauthorized drug test by relying on it as a basis to disqualify an employee from unemployment compensation benefits." *Eaton v. Iowa Employment Appeal Board*, 602 N.W.2d 553, 557, 558 (Iowa 1999).

The employer failed to give the claimant notice of the test results by certified mail according to the strict and explicit statutory requirements. Thus, employer cannot use the results of the drug screen as a basis for disqualification from benefits. Benefits are allowed.

**DECISION:**

The June 4, 2015, reference 02, decision is reversed. Claimant was suspended and placed on leave of absence from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible.

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Teresa K. Hillary  
Administrative Law Judge

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Decision Dated and Mailed

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