

**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**

**KATHLEEN A MUTCHLER  
3401 SW 5<sup>TH</sup>  
DES MOINES IA 50315-3134**

**DES MOINES INDEPENDENT COMMUNITY  
SCHOOL DISTRICT  
ATTN BUSINESS/FINANCE  
1801 - 16<sup>TH</sup> ST  
DES MOINES IA 50314-1902**

**Appeal Number: 04A-UI-04365-CT  
OC: 03/21/04 R: 02  
Claimant: Appellant (2)**

**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, 4<sup>th</sup> 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Kathleen Mutchler filed an appeal from a representative's decision dated April 9, 2004, reference 01, which denied benefits based on her separation from Des Moines Independent Community School District. After due notice was issued, a hearing was held by telephone on May 11, 2004. Ms. Mutchler participated personally. The employer participated by Cathy McKay, Risk Manager.

#### FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all the evidence in the record, the administrative law judge finds: Ms. Mutchler was employed by the school district from September of 2000 until March 26, 2004 as a full-time school bus driver. Employees such as Ms. Mutchler who hold a CDL are subject to random drug testing. All individuals whose job requires a CDL are in a pool from which a third party randomly selects individuals to be tested. Ms. Mutchler underwent a random test on one occasion prior to March 12, 2004 and the results were negative.

On March 12, 2004, Ms. Mutchler provided a urine sample after being selected for random testing. She was notified by telephone on March 16 that the results were positive for amphetamines. She was taking prescription medications and took all of her medications to the medical review officer (MRO) on March 16. The MRO did not review the medications but told Ms. Mutchler that she had until March 19 in which to decide if she wanted the split of the initial sample tested. At approximately 3:30 p.m. on March 17, she was called by the MRO and told that he was not going to be available on March 19 and that she had to provide \$150.00 that day if she wanted to have the split tested. Ms. Mutchler was not able to meet this deadline and, therefore, the positive test results were reported to the school district. Ms. Mutchler was not notified by certified mail of her right to request a retest. The positive drug test was the sole reason for the discharge.

#### REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. Mutchler 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 in connection with the employment. The employer had the burden of proving disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Ms. Mutchler was discharged because she tested positive for amphetamines. The individual who participated on behalf of the employer did not have details of the testing or test results. The employer did not dispute Ms. Mutchler's testimony that the employer's policy allowed her 72 hours in which to give notice of the intent to have the split sample tested. Ms. Mutchler was given substantially less than 72 hours in which to seek testing. She was notified of the results on March 16 and given until the close of business on March 17 in which to make payment for the additional testing.

Ms. Mutchler made her medications available to the MRO. There was no evidence that these medications were considered before the employer was notified of the positive results. In other words, there is no statement from the MRO indicating that Ms. Mutchler's prescription medications would not account for the amphetamines in her system. Because Ms. Mutchler was not given a fair opportunity to dispute the drug test results, the results cannot form the basis of a misconduct disqualification. For this reason, benefits are allowed.

#### DECISION:

The representative's decision dated April 9, 2004, reference 01, is hereby reversed. Ms. Mutchler was discharged but disqualifying misconduct has not been established. Benefits are allowed, provided she satisfies all other conditions of eligibility.

cfc/kjf