

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ERICKA CROWE
Claimant

APPEAL NO: 09A-UI-10285-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

IOC SERVICES LLC
Employer

OC: 06/07/09
Claimant: Appellant (1)

Iowa Code § 96.5(2)(a) - Discharge for Misconduct

STATEMENT OF THE CASE:

Ericka Crowe (claimant) appealed an unemployment insurance decision dated July 7, 2009, reference 01, which held that she was not eligible for unemployment insurance benefits because she was discharged from IOC Services, LLC (employer) for work-related misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 4, 2009. The claimant participated in the hearing. The employer participated through Sara Frank, Benefits & Training Supervisor. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

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

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a part-time beverage server from March 27, 2006 through May 1, 2009. The employer has a written drug policy and she was given a copy of that policy at the time of hire. The claimant was chosen on a random basis by a third party company for a drug test to be performed on April 20, 2009. She provided a urine sample which was split and then one part was tested at the employer's facility by a medical review officer. The claimant tested positive for marijuana and admitted using marijuana.

The medical review officer notified her by telephone of the positive result. On May 1, 2009 the employer provided the claimant with written notification by certified mail, return receipt requested, of the positive result and her right to obtain a confirmatory test of the secondary sample that was taken at the time of the initial test. She was suspended pending further testing which had to be done within seven days of the receipt of the letter. The claimant elected not to proceed with further testing as her badge was revoked on April 30, 2009 for a period of five years by the Iowa Racing and Gaming Division.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a.

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.

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 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 her positive drug test for marijuana. Iowa Code § 730.5 sets forth the rules by which a private company may screen its employees for use of illegal drugs. In order for a violation of an employer's drug or alcohol policy to be disqualifying misconduct, it must be based on a drug test performed in compliance with Iowa's drug testing laws. Eaton v. Iowa Employment Appeal Board, 602 N.W.2d 553, 558 (Iowa 1999). The Eaton court said, "It would be contrary to the spirit of chapter 730 to allow an employer to benefit from an unauthorized drug test by relying on it as a basis to disqualify an employee from unemployment compensation benefits." Eaton, 602 N.W.2d at 558.

The employer has a written drug testing policy per Iowa Code § 730.5(9)(b) and tested the claimant on a random basis. The test was performed during the workday at the medical office

within the facility and split samples were taken at the time of collection. Iowa Code §§ 730.5(6) and (7)(a-c). A medical review officer reviewed and interpreted the confirmed positive test result and notified the claimant of the positive results before reporting the results to the employer; Iowa Code § 730.5(7)(g). The claimant was notified by certified mail, return receipt requested, of the positive result and her right to obtain a confirmatory test of the secondary sample within seven days. Iowa Code § 730.5(7)(i)(1) and (2). The claimant elected not to have the secondary sample retested. The employer has met the requirements of Iowa Code § 730.5. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

DECISION:

The unemployment insurance decision dated July 7, 2009, reference 01, is affirmed. The claimant is not eligible to receive unemployment insurance benefits because she was discharged from work for misconduct. Benefits are withheld until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/pjs