

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ROBERT J CLAYTON**  
Claimant

**APPEAL NO: 11A-UI-06200-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**RYDER INTEGRATED LOGISTICS INC**  
Employer

**OC: 12/26/10  
Claimant: Appellant (2)**

Iowa Code § 96.5(2)a - Discharge

**PROCEDURAL STATEMENT OF THE CASE:**

The claimant appealed a representative's May 6, 2011 determination (reference 01) that disqualified him from receiving benefits and held the employer's account exempt from charge because he had been discharged for disqualifying reasons. The claimant participated in the hearing. Ellen Heuer, the employer's human resource representative, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is qualified to receive benefits.

**ISSUE:**

Did the employer discharge the claimant for reasons that constitute work-connected misconduct?

**FINDINGS OF FACT:**

The claimant started working for the employer in May 1997. He worked full time. Prior to March 2, 2011, the claimant's job was not in jeopardy.

The claimant understood the employer's drug and alcohol policy required him to submit to random drug testing. The policy informs employees they can be discharged if they fail a random drug test.

In late February 2011, the claimant was randomly selected to take a drug test. The claimant's test result was positive for marijuana. A medical review officer called the claimant to tell him about the results of the test.

Even though the claimant smoked marijuana a couple of weeks earlier at a party after he had too much to drink, he was surprised he tested positive. After the employer learned about the positive test result on March 2, the employer discharged the claimant for violating the employer's drug and alcohol policy.

The employer did not send the claimant a certified letter telling him he could have a second test performed on the split sample at laboratory that he chose. Since March 2, the claimant has taken the necessary steps to address any alcohol issues and get his life back on track.

**REASONING AND CONCLUSIONS OF LAW:**

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code § 96.5(2)a. For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The Iowa Supreme Court has ruled that an employer cannot establish disqualifying misconduct based on a drug test performed in violation of Iowa's drug testing laws. *Harrison v. Employment Appeal Board*, 659 N.W.2d 581 (Iowa 2003); *Eaton v. Employment Appeal Board*, 602 N.W.2d 553, 558 (Iowa 1999). As the court in *Eaton* stated, "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.

Iowa Code § 730.5(9)a states an employer can take disciplinary action against an employee including termination of employment, upon receipt of "a confirmed positive test result for drugs or alcohol." However, for a person to be terminated for a failed drug test, the law requires an employer to notify an employee in writing by certified mail, return receipt requested, of the results of the test, the right to request and obtain a confirmatory test of the second sample collected at an approved laboratory of the employee's choice, and the fee payable to the employer for reimbursement of expenses concerning the test. Iowa Code § 730.5(7)i. The employer violated this section of the law by not sending the claimant a certified letter with this information.

It would be contrary to the spirit of chapter 730 to disqualify the claimant from receiving unemployment insurance benefits based on a drug test that is not in compliance with the law. While the employer established business reasons for discharging the claimant, the employer did not establish that the claimant committed work-connected misconduct. As March 20, 2011, the claimant is qualified to receive benefits.

**DECISION:**

The representative's May 6, 2011 determination (reference 01) is reversed. The employer discharged the claimant, but did not establish that the claimant committed work-connected misconduct. As of March 20, 2011, the claimant is qualified to receive benefits, provided he meets all other eligibility requirements. The employer's account is subject to charge.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/pjs