

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ALFRED MONROE
Claimant

APPEAL NO: 11A-UI-05980-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

R J PERSONNEL INC
Employer

OC: 04-03-11
Claimant: Appellant (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the May 2, 2011, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on June 1, 2011. The claimant participated in the hearing. Mike Thomas, Account Manager, participated in the hearing on behalf of the employer. Employer's Exhibits One through Six were admitted into evidence.

ISSUE:

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

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time janitor for Temp Associates and assigned to SSAB from October 27, 2008 to April 11, 2011. He was discharged for violation of the employer's substance abuse policy. The claimant received a copy of the employer's written substance abuse policy and signed a consent form to submit to drug testing. A contact at SSAB saw the claimant go into the bathroom April 5, 2011, and noticed he smelled like marijuana after he came out. The contact notified the employer who sent the claimant home for the day. The employer tried to take the claimant to Lab Corp on April 5, 2011 but the employer had the incorrect address for the claimant. The employer picked the claimant up on April 6, 2011, and took him to Lab Corp where the claimant provided a urine sample. The sample was split and Trinity Muscatine Occupational Medicine Department determined it was positive April 8, 2011, for THC. On April 11, 2011, the employer sent the claimant a certified letter, return receipt requested, of the positive result and advised him of the option of testing the split sample. The letter advised the claimant he had seven days in which to request a confirmatory test. The claimant failed to claim the letter and it was sent back to the employer April 20, 2011. Account Manager Mike Thompson spoke to the claimant April 14, 2011, when he picked up his final paycheck. The claimant admitted he had a card from the post office telling him he had a certified letter but he had not picked it up. Mr. Thomas explained what was in the letter and the claimant said, "okay" and that he would go get the letter. The employer never heard from him after that date. The claimant admitted he smoked marijuana at home approximately 20 minutes

before he went to work. He said his phone was shut off and that he did not have any gas to get to the post office to pick up the certified letter.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for disqualifying job misconduct.

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 his 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. The employer has a written drug testing policy per Iowa Code § 730.5(9)(b) and tested the claimant based on reasonable suspicion. The claimant was advised of the drugs to be tested. Iowa Code § 730.5(7)(c)(2). The test was performed during the workday at a medical 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. Iowa Code § 730.5(7)(g). The claimant was notified by regular mail and certified mail, return receipt requested, of the positive result and his right to obtain a confirmatory test of the secondary sample. He refused to accept the letter but was given the same information when he

picked up his last check. Iowa Code § 730.5(7)(i)(1) and (2). He was advised if he wanted to proceed to test the secondary sample, he needed to notify the Medical Review Officer within seven days from the date of the letter but took no further action. The employer has met the requirements of Iowa Code § 730.5. Work-connected misconduct as defined by the unemployment insurance law has been established. Therefore, benefits are denied.

DECISION:

The May 2, 2011, reference 01, decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs