

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHAEL D O'NEILL
Claimant

APPEAL NO. 07A-UI-04312-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MANPOWER INC OF D M
Employer

**OC: 12/31/06 R: 02
Claimant: Respondent (1)**

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated April 17, 2007, reference 06, that concluded the claimant was not disqualified for refusing suitable work. A telephone hearing was held on May 15, 2007. The parties were properly notified about the hearing. The claimant participated in the hearing. No one participated in the hearing on behalf of the employer.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The employer is a staffing service that provides workers to client businesses on a temporary or indefinite basis. The claimant worked for the employer on an assignment at Ryko Manufacturing on September 15, 2005, to December 30, 2006.

The claimant filed a claim for unemployment insurance benefits with an effective date of December 31, 2006.

The claimant was offered and accepted an assignment working as a warehouse worker for Pioneer Hi-Bred. The job required the claimant to pass a pre-employment drug test. The employer discharged the claimant on March 22, 2007, after it was notified that the claimant had tested positive for some drug.

There is no evidence regarding the employer's drug and alcohol testing policy. The claimant was not notified in writing by certified mail regarding the results of the test or of his right to have a split sample tested.

REASONING AND CONCLUSIONS OF LAW:

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.

Since the employer did not participate in the hearing, there is no evidence that the testing conducted in this case complied with Iowa Code section 730.5. Therefore, the claimant is not subject to disqualification.

DECISION:

The unemployment insurance decision dated April 17, 2007, reference 06, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/css