

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MELVIN R GRANAMAN
Claimant

APPEAL NO. 11A-UI-09048-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

ALANIZ
Employer

**OC: 03/27/11
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Melvin Granaman (claimant) appealed a representative's July 1, 2011 decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits because he was discharged from work with Alaniz (employer) for violation of a known company rule. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for August 22, 2011. The claimant was represented by Toby Gordon, Attorney at Law, and participated personally. The employer participated by Mike Owens, Human Resources Manager. Julie Linderman observed the hearing.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

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 hired on January 31, 2005, as a full-time machine operator. The claimant signed for receipt of the employer's handbook and written Drug Policy on December 22, 2009. On May 25, 2011, the claimant submitted to a random drug test at work. After providing the sample, he continued working through June 2, 2011. After work on June 2, 2011, the employer called the claimant on the telephone. The employer told the claimant he tested positive for an undisclosed drug and terminated the claimant. The employer sent the claimant a certified letter on June 2, 2011. The claimant signed for receipt of the letter on June 6, 2011. The letter provided the results of the testing and informed the claimant he was terminated. Additional testing was offered the claimant but the cost was not listed in the letter.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant was discharged for misconduct. For the following reasons the administrative law judge concludes he was not.

Iowa Code section 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 of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The claimant was terminated for violating the employer's drug policy.

Iowa Code section 730.5(7)(i)(1) states:

If a confirmed positive test result for drugs or alcohol for a current employee is reported to the employer by the medical review officer, the employer shall notify the employee in writing by certified mail, return receipt requested, of the results of the test, the employee's right to request and obtain a confirmatory test of the second sample collected pursuant to paragraph "b" at an approved laboratory of the employee's choice, and the fee payable by the employee to the employer for reimbursement of expenses concerning the test. The fee charged an employee shall be an amount that represents the costs associated with conducting the second confirmatory test, which shall be consistent with the employer's cost for conducting the initial confirmatory test on an employee's sample.

In this case the employer took disciplinary action against the claimant at the time it notified him of the test results. In addition, the employer did not disclose to the claimant cost of a confirmatory test. The Iowa Supreme Court has held that an employer may not "benefit from an unauthorized drug test by relying on it as a basis to disqualify an employee from unemployment compensation benefits." Eaton v. Iowa Employment Appeal Board, 602 N.W.2d at 558. The

employer failed to give the claimant notice of the test results according to the strict and explicit statutory requirements and failed to allow him an opportunity for evaluation and treatment. Benefits are allowed.

DECISION:

The representative's July 1, 2011 decision (reference 01) is reversed. The employer has not met its proof to establish job-related misconduct. Benefits are allowed.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/css