

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**NANCY M BOND**  
Claimant

**APPEAL NO: 14A-UI-08568-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TPI IOWA LLC**  
Employer

**OC: 07/27/14**  
**Claimant: Appellant (1)**

Section 96.5-2-a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the August 13, 2014, 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 September 8, 2014. The claimant participated in the hearing with witness/fiancé/former associate Deondre Jefferson. Danielle Williams, Human Resources Coordinator, participated in the hearing on behalf of the employer. Employer's Exhibits One through Four 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 production worker for TPI Iowa from December 2, 2012 to July 1, 2014. She voluntarily quit her job by refusing to take a drug test after being randomly selected to do so.

The claimant was notified she had been selected by a computer generated program administered by a third party for a random drug test. She was escorted to the testing site and completed the pre-test paperwork. The claimant then stated she wanted to call her attorney before taking the test. She experienced a Worker's Compensation injury February 2, 2014, and made a claim against the employer. Consequently, the claimant's attorney told her to talk to him before signing anything for the employer or doing anything for the employer outside her regular work duties. The employer allowed her to call her attorney but because the claimant worked from 5:00 p.m. to 5:00 a.m. and it was after 5:00 p.m. she could not reach her attorney. The claimant also contacted her fiancé and stated she would need him to pick her up from work early so she could call her attorney. The claimant notified the employer she was going to leave the premises until she could talk to her attorney and the employer notified her that if she left the testing area it would be considered a refusal to submit to testing and as a result the employer would consider her to have voluntarily quit her job. The employer talked to the claimant in detail and encouraged her to think about the consequences of leaving. The claimant expressed

concern that her prescribed medications would result in a positive drug screen. The employer explained she would have an opportunity to tell the person administering the test what prescription drugs she was on and additionally the medical review officer could also tell if the test matched prescription drugs the claimant listed prior to the test. The claimant said she was worried that one of her prescribed medications would show up as a false positive test for cocaine and the employer assured her that the lab and medical review officer were familiar with prescription medications and valid medications would not result in a positive test result. The claimant again expressed concern that one of her medications would show up as cocaine and the employer again told her the lab and medical review officer knew how to determine the difference. A few minutes later the claimant's fiancé arrived and knocked at the front door, stating he was there to pick up the claimant. The claimant then left without speaking to the employer again. Consequently, the employer determined she voluntarily quit her job by refusing to submit to a random drug screen and walking off her job.

The claimant testified she never received a copy of the employer's handbook which contains its drug and alcohol policy and testing procedures. The employer prepares folders for each new employee containing paperwork that must be completed and returned to the employer and paperwork the employer must sign for in receipt. The employer's policy states, "The refusal by an associate or prospective associate is considered equivalent to a confirmed positive drug test and therefore subjects the associate to the same adverse employment actions" (Employer's Exhibit Four). The policy further states, "If TPI is provided a confirmed positive drug test of an associate the associate shall be subject to immediate termination for misconduct" (Employer's Exhibit Four).

#### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related 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.

Iowa Admin. Code r. 871-24.32(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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Dep't of Job Serv., 275 N.W.2d 445, 448 (Iowa 1979).

The claimant refused to submit to a random drug test administered by the employer's third party group that selects employees for testing using a computer model. While the claimant wanted to consult her attorney because she has a Worker's Compensation claim against the employer, that is a separate issue from random drug testing. The employer allowed the claimant to call her attorney but he was not available as it was after 5:00 p.m. when the claimant attempted to call him. The claimant then cited other reasons for refusing to take the test, including that she was on prescription medications following her work-related injury and twice stated she was also afraid one of her prescription drugs would show up as cocaine, a rather unreasonable conclusion. The employer explained she would have an opportunity to tell the person administering the tests what prescription medications she was on and that the lab and medical review officer would also be able to distinguish drugs prescribed to the claimant by a physician from street drugs. Rather than submit to testing, even after the employer told her a refusal would result in separation from employment classified as a termination for misconduct because a test refusal is viewed the same as a positive test result, the claimant called her fiancé to pick her up and left without further discussing the matter with the employer.

The claimant insists she did not refuse to submit to a random drug screen but merely wanted to speak to her attorney first. The claimant's attorney, however, was not available at the time as it was past his office hours and she did not have access to his cell phone number so there was no reasonable hope of reaching him during her shift. The fact that she then left the facility without being tested is a test refusal. An employer cannot allow an employee to leave the premises after being selected for a random drug test and then return and take the test. If that were the case, the test could be compromised. There are several reasons for this policy, including that the employee could attempt to beat the test by purchasing clean urine or using a cleansing product prior to the test.

Finally, the claimant asserts she was treated unfairly because some Muslim employees were not required to take the random test at the time the claimant was required to be tested but were placed on the list for the following month. The employer explained those employees were fasting for religious purposes and could not eat anything or drink anything.

Under these circumstances, the administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Therefore, benefits are denied.

**DECISION:**

The August 13, 2014, reference 01, decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

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