

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LARRY GWINN
Claimant

APPEAL NO: 14A-UI-01232-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

TPI IOWA LLC
Employer

OC: 01/05/14
Claimant: Appellant (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the January 27, 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 February 25, 2014. The claimant participated in the hearing. Emily McMahon, Human Resources Supervisor, participated in the hearing on behalf of the employer.

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 spar cap for TPI Iowa from September 4, 2013 to November 13, 2013. He was discharged for failing a random drug test.

The employer requires random drug-tests of manufacturing employees, in safety sensitive positions, on a quarterly basis. The employees to be tested are selected by a third party, independent provider, which uses a computer generated numbering system when choosing who will be tested in accordance with Iowa Code section 730.5. On November 7, 2013, the claimant's number was picked for a random drug test and the test was done at the beginning of his shift on site, using an area blocked off by the employer in its lobby. The third party company who administers the tests sends a technician to conduct the testing and a member of the human resources team goes to the manufacturing floor, notifies the employees to be tested, and walks each up front to be tested. The testing conditions are sanitary and private and the claimant's urine sample was split at the time of collection. The claimant was given the opportunity to provide any information to the medical review officer that might affect the test results and was informed of all of the drugs for which he would be tested. The medical review officer notified the claimant he tested positive for opiates and marijuana November 13, 2013, before providing the employer with the same information. After receiving the positive test results, the employer sent

the claimant a certified letter, return receipt requested, notifying him of his right to a confirmatory test at a cost of approximately \$75.00. The claimant refused delivery of the letter. The claimant also denies the use of marijuana or opiates and stated he has been "clean and sober for at least a couple of years." The employer terminated the claimant's employment November 13, 2013.

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 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 proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Iowa Code section 730.5 provides the authority under which a private sector employer doing business in Iowa may conduct drug or alcohol testing of employees. Random drug testing is allowed provided the employees are selected by a third party company using a computer based system. The evidence in the record clearly establishes that the employer met all requirements of Iowa Code section 730.5 even though the claimant denies using opiates or marijuana. The employer followed the process provided for random testing, performed the test immediately before the claimant's shift, paid the costs of the initial test, provided private and sanitary conditions for the test, split the samples at the time of the collection, gave the claimant an opportunity to provide any information that might affect the outcome of his test, and informed the claimant of which drugs would be tested. Additionally, it

had the confirmed positive testing done by a certified laboratory before taking disciplinary action, notified the claimant of the test results by certified mail, return receipt requested, and stated his right to a confirmatory test at his own expense of approximately \$75.00. The employer's drug and alcohol free workplace policies were provided to the claimant in writing.

Because the employer correctly followed the provisions of Iowa Code section 730.5 the test was authorized by law and can serve as the basis for disqualifying the claimant from unemployment insurance benefits. Based upon the evidence in the record and the application of the appropriate law, the administrative law judge concludes that the claimant was discharged from employment for disqualifying job misconduct upon testing positive for illegal drugs and illegal drug usage. Therefore, benefits are denied.

DECISION:

The January 27, 2014, 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