

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**TRAVIS R ZEITHAMEL**  
Claimant

**APPEAL NO. 07A-UI-10336-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ALLEN HARRIS EXCAVATING CO**  
Employer

**OC: 12/10/06 R: 03  
Claimant: Respondent (2)**

Section 96.5(2)a – Discharge

**STATEMENT OF THE CASE:**

The employer, Allen Harris Excavating Company, filed an appeal from a decision dated October 29, 2007, reference 09. The decision allowed benefits to the claimant, Travis Zeithamel. After due notice was issued, a hearing was held by telephone conference call on November 27, 2007. The claimant did not provide a telephone number where he could be contacted and did not participate. The employer participated by Operations Manager Jeff Harris.

**ISSUE:**

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

**FINDINGS OF FACT:**

Travis Zeithamel was employed by Allen Excavating Company from March 13 until August 22, 2007, as a full-time laborer. On March 19, 2007, he signed for the employee handbook which includes the employer's drug policy. Employees who are injured on the job are subject to a drug test.

The claimant was injured on July 10, 2007, and treated at Mercy Hospital in Iowa City, Iowa. His drug test came back positive for marijuana and Operations Manager Jeff Harris discussed the results with him. Mr. Zeithamel acknowledged he had been smoking marijuana and was told by the employer to "come back when he was clean." He did come back around the second week in August 2007 stating he was now clean. Mr. Harris talked with him and agreed to rehire him, but reminded him of the drug policy which provides for a random test within 30 days for any employee who has returned to work after a separation for violation of the policy.

On August 22, 2007, the claimant's name came up for a random test and Mr. Harris notified him he was to go in for testing. The claimant refused because "he knew he would test positive." The employer notified him failure to take the random test was grounds for immediate discharge, and the claimant still refused. He was fired at that time.

Travis Zeithamel filed an additional claim for unemployment benefits with an effective date of October 7, 2007. The records of Iowa Workforce Development indicate no benefits have been paid as of the date of the hearing.

**REASONING AND CONCLUSIONS OF LAW:**

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 claimant had received a copy of the employer's drug policy and knew the provisions regarding a rehire after a drug-related separation. He refused to submit to the random drug test within the first 30 days of his new employment period and was discharged. The claimant apparently knew he was not, in fact, "clean" as he had asserted when he asked for his job back. This is a violation of a known company rule, which is conduct not in the best interests of the employer. The claimant is disqualified.

**DECISION:**

The representative's decision of October 29, 2007, reference 09, is reversed. Travis Zeithamel is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount, provided he is otherwise eligible.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

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