

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**JEREMY A BOECKMANN**  
Claimant

**HYPRO INC**  
Employer

**APPEAL 16A-UI-11845-DL-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 07/24/16**  
**Claimant: Appellant (2)**

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Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Code § 730.5 – Private Sector Drug-free Workplaces

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the October 26, 2016, (reference 02) unemployment insurance decision that denied benefits based upon a discharge from employment. The parties were properly notified about the hearing. A telephone hearing was held on November 21, 2016. Claimant participated and was represented by Erin Lyons, Attorney at Law. Employer did not respond to the hearing notice instruction and did not participate.

**ISSUE:**

Was the claimant discharged for disqualifying job-related misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a full-time C&C machinist through Monday, October 10, 2016. Human resources representative Amanda Snyder and plant manager Bruce DeVries said there were accusations of him using drugs and ordered him to submit to a drug screen urinalysis in an employer-administered kit at work in front of production manager Cliff at 7 a.m. It was negative and he returned to work and about two hours later the employer said they “messed up” by not having it administered at a local clinic rather than at the workplace. Claimant initially agreed and went to the clinic with DeVries about 9 a.m. The doctor said he would watch him urinate into the cup. Claimant balked and said he needed to seek legal advice before submitting to a second test. He was told he had until noon to submit. When claimant returned to the facility DeVries told Snyder he refused the second test. Claimant interjected and said he only wanted to seek legal advice before submitting to a second test. DeVries fired him prior to the deadline for submission to a second test.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

Iowa Code section 96.5(2)a provides:

**Causes for disqualification.**

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. *Reigelsberger v. Emp't Appeal Bd.*, 500 N.W.2d 64, 66 (Iowa 1993); *accord Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661, 665 (Iowa 2000).

The employer has the burden of proving disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). Whether an employee violated an employer's policies is a different issue from whether the employee is disqualified for misconduct for purposes of unemployment insurance benefits. See *Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661, 665 (Iowa 2000) ("Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of benefits." (Quoting *Reigelsberger*, 500 N.W.2d at 66.)). Iowa Code section 730.5 allows drug testing of an employee upon "reasonable suspicion" that an employee's faculties are impaired on the job or on an unannounced random basis. Iowa Code section 730.5(7)(i)(1) mandates that an employer, upon a confirmed positive drug or alcohol test *by a certified laboratory*, notify the employee of the test results by certified mail return receipt requested, and the right to obtain a confirmatory or split-sample test before taking disciplinary action against an employee.

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 Emp't Appeal Bd.*, 602 N.W.2d 553, 557, 558 (Iowa 1999).

In an at-will employment environment an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, it incurs potential liability for unemployment insurance benefits related to that separation. A violation is not necessarily disqualifying misconduct even if the employer was fully within its rights to impose discipline up to or including discharge for the incident under its policy. While the employer

certainly may have been within its rights to test the claimant, upon the first request and submission to testing, it failed to have the sample handled by a certified facility. Further, the claimant submitted to the first test and there is no basis for disqualification from benefits because of asking for a legal opinion before submitting to a second test. Finally, the employer discharged him prior to the stated expiration time of a second test.

**DECISION:**

The October 26, 2016, (reference 02) unemployment insurance decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible.

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Dévon M. Lewis  
Administrative Law Judge

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Decision Dated and Mailed

dml/rvs