

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SHARENE R HAWKINS**  
Claimant

**APPEAL NO. 13A-UI-05637-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ELMWOOD CARE CENTER LLC**  
Employer

**OC: 04/14/13**  
**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge for Misconduct  
Section 730.5 – Drug Testing

**STATEMENT OF THE CASE:**

The employer appealed a department representative's decision dated May 3, 2013, reference 01, that the claimant was not discharged for misconduct on April 12, 2013, and benefits are allowed. A hearing was held on June 18, 2013. The claimant, and witness, and Jennifer Bryan, participated. Jean Dekker, Office Manager; Melissa Donnelly, D.O.N.; and Loretta Sloss, Administrator, participated for the employer. Claimant Exhibit A was received as evidence.

**ISSUE:**

The issue is whether the claimant was discharged for misconduct.

**FINDINGS OF FACT:**

The administrative law judge, having heard the witness testimony and having considered the evidence in the record, finds that: The claimant worked from March 12, 2009 to April 12, 2013. She was last employed as full-time environmental services supervisor. The claimant received the Drug & Alcohol policy of the employer that contains a provision she is subject to drug testing.

The claimant was the subject of a reasonable suspicion drug screen on April 12, and she consented to the test that was positive for marijuana (THC). The employer had received a report from an employee claimant had been using an illegal drug. The employer had noticed behavioral change in claimant's demeanor with a suspicion that using an illegal drug was the reason.

A certified drug testing employee of the employer administered the drug test and obtained one urine sample placed in a sealed cup that was sent for laboratory testing. The preliminary test result was positive for marijuana and claimant was suspended. The laboratory notified the employer the urine was positive for marijuana and claimant was terminated in person on April 19 for drug policy violation. The claimant was not sent a certified notice of the positive test nor was she advised of her right to request a confirmatory test of a secondary sample.

**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.

The administrative law judge has reviewed the records and files herein and concludes that the employer failed to establish misconduct in the discharge of the claimant on April 19, 2013, because it failed to follow the drug testing requisites of Iowa Code section 730.5.

The law requires that an employee be given written notice by certified mail of a positive drug test, and that she be advised of her right to request and obtain a confirmatory test of a secondary sample. The employer orally advised claimant of the positive test, but it failed to send her notice by certified mail with the right to request a confirmatory test.

The employer did not have a reasonable suspicion basis for the drug test based on what it knew at the time to request the test.

**DECISION:**

The decision of the representative dated May 3, 2013 reference 01, is affirmed. The claimant was not discharged for misconduct in connection with employment on April 19, 2013. Benefits are allowed, provided the claimant is otherwise eligible.

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Randy L. Stephenson  
Administrative Law Judge

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Decision Dated and Mailed

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