

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**JEFFREY W WEIDEMANN**  
Claimant

**BUILDING PRODUCTS INC OF IOWA**  
Employer

**APPEAL 17R-UI-06161-NM-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 04/02/17**  
**Claimant: Appellant (1)**

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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 April 20, 2017, (reference 01) unemployment insurance decision that denied benefits based upon his discharge for violation of a known company rule. The parties were properly notified of the hearing. A telephone hearing was held on June 30, 2017. The claimant participated and testified. The employer participated through Human Resource Manager Shante Jackson.

**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 full time as a warehouse associate from March 22, 1999, until this employment ended on April 4, 2017, when he was discharged.

The employer has a policy in place which prohibits drug and alcohol use and provides for employees to be randomly tested for these substances. Under the employer's policy all permanent employees may be subject to selection for testing via random selection completed by a third party administrator's computer program. Claimant did receive a copy of employer's drug and alcohol use policy and signed an acknowledgement of such on May 15, 2015.

On April 3, 2017, claimant was part of a pool of employees selected by the third party administrator for testing. Claimant and the other employees were notified of their selection and transported to the third party administrator's testing site. There, claimant was given a consent form, including a list of substances for which he would be tested. Claimant was then taken to a private area to produce his testing sample. Claimant's sample did not immediately return as negative, meaning that the third party administrator needed to send it to a medical review officer for final results. Claimant was immediately notified by the employer that his sample came back with unusual results and that he would be suspended pending the final result. Claimant then

admitted to Jackson he had used marijuana and the sample would test positive. Jackson testified this admission alone could have led to claimant's termination. Claimant testified he was notified the following day that his employment was going to be terminated. Claimant's test results confirmed he was positive for marijuana. Claimant was sent a copy of his test results, along with information regarding his right to have a second split sample test done, via certified mail. Jackson testified claimant's termination letter was included with this information. Claimant signed the return receipt for the information on April 13, 2017. Claimant did not request a second test.

### **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 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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445, 448 (Iowa 1979).

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.)). Testing under Iowa Code section 730.5(4) allows employers to test employees for drugs and/or alcohol but requires the employer "adhere to the requirements . . . concerning the conduct of such testing and the use and disposition of the results."

The employer has met the requirements of Iowa Code section 730.5. The claimant did receive a copy of employer's drug and alcohol use policy, he was tested at a certified testing facility by random sample, the drug screen was positive for marijuana, claimant was notified by certified mail and offered a split screen sample, and he did not request a second test of the split sample. Employees are required to be drug free in the workplace. The violation of the known work rule constitutes misconduct as it presents a safety hazard to the employee and the general public and potential liability for the employer. It should also be noted that while the employer has met the requirements of section 730.5, claimant's admission of drug use to the employer following testing, but before they received the result, would also likely be substantial evidence of disqualifying misconduct. Benefits are denied.

**DECISION:**

The April 20, 2017, (reference 01) unemployment insurance decision is affirmed. 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.

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Nicole Merrill  
Administrative Law Judge

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Decision Dated and Mailed

nm/scn