

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DORIS M PAYNE
Claimant

APPEAL NO. 11A-UI-04392-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MIDWEST HOMESTEAD OF MASON CITY
Employer

OC: 03/06/11
Claimant: Appellant (2)

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 a timely appeal from the April 1, 2011 (reference 01) decision that denied benefits. After due notice was issued, a telephone conference hearing was held on April 28, 2011. Claimant participated. Employer participated through Cliff Hagman and Sharon Parks.

ISSUE:

The issue is whether claimant was discharged for reasons related to job misconduct sufficient to warrant a denial of benefits.

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant most recently worked part-time as a caregiver and was separated from employment on March 8, 2011. The employer determined that medication was missing and screened all employees with access or keys to the medication room. The initial screen taken in house on December 21, 2010 was “non-negative.” So she was instructed to be further screened on February 28, 2011 and those results returned positive for marijuana on March 3, 2011. The employer did not give claimant a detailed written policy about drug screening procedures, she was not notified in writing of the test results, nor was she advised of the process to request a split sample screen. The results were not kept confidential in house or outside of the employer’s facility.

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 § 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 job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982).

Iowa Code § 730.5 allows drug testing of an employee if, among other conditions, the employer has "probable cause to believe that an employee's faculties are impaired on the job." Upon a positive drug screen, Iowa Code § 730.5(3)(f) requires that an employer offer substance abuse evaluation and treatment to an employee the first time the employee has a positive drug test. Iowa Code § 730.5(9) requires that a written drug screen policy be provided to every employee subject to testing. Iowa Code § 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 and the right to obtain a confirmatory test before taking disciplinary action against an employee. Upon a positive drug screen, Iowa Code § 730.5(9)(g) requires, under certain circumstances, that an employer offer substance abuse evaluation and treatment to an employee the first time the employee has a positive drug test. 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 Employment Appeal Board*, 602 N.W.2d 553, 557, 558 (Iowa 1999).

The employer failed to provide a written copy of the drug testing policy to the claimant, failed to give her notice of the test results according to the strict and explicit statutory requirements, and

failed to allow her an opportunity for another test even if a split sample was taken. Thus, employer cannot use the results of the drug screen as a basis for disqualification from benefits. Benefits are allowed.

DECISION:

The April 1, 2011 (reference 01) decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/pjs