

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**JOHN THOMAS**  
Claimant

**APPEAL 16A-UI-09036-CL-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**BRIDGESTONE AMERICAS TIRE**  
Employer

**OC: 07/31/16  
Claimant: Appellant (2)**

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Iowa Code § 96.5(2)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the August 18, 2016, (reference 01) unemployment insurance decision that denied benefits based upon misconduct. The parties were properly notified about the hearing. A telephone hearing was held on September 7, 2016. Claimant participated. Employer participated through division human resources manager Jim Funcheon, labor relations section manager Jeff Higgins, and medical department manager Pete Goshorn. Employer's Exhibit 1 was received.

**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 began working for employer on June 10, 2013. Claimant last worked as a production worker. Claimant was separated from employment on July 15, 2016, when he was terminated.

Employer has a Drug-Free Workplace policy prohibiting the presence of drugs or alcohol in employees' bodies while in the workplace. The policy states that employees will be terminated after a second violation of the policy. Pursuant to the policy, employer subjects employees who have had one positive drug test to random drug testing. The employees who have one positive drug test are pooled into one group, and employees in the pool are randomly chosen by a computer program for testing. No other employees are subjected to random drug testing pursuant to the policy. The policy is not a part of any collective bargaining agreement. Claimant received a copy of the policy.

In 2014, claimant was subjected to a post-accident drug test. Claimant tested positive for marijuana.

On July 11, 2016, claimant was asked to take a random drug test pursuant to the policy described above. The test results were positive for marijuana. The test was positive because claimant ingested marijuana.

The results and notice of termination were provided to claimant by certified mail with return receipt requested on July 15, 2016. The claimant was offered but did not pursue a split sample 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 § 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.

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. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

In this case, the employer terminated claimant based on a drug test that was positive for marijuana. Although the test was positive because claimant consumed marijuana, employer does not assert it terminated claimant based on any admission of consumption.

Thus, the only issue is whether the drug test was an authorized drug test under Iowa law, as 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).

Iowa law is very specific about what an employer shall, may or cannot do when creating a private sector drug-free workplace. See Iowa Code § 730.5. Iowa Code § 730.5(8)(a) provides the circumstances under which employers may conduct unannounced drug tests of its employees. It states:

a. Employers may conduct unannounced drug or alcohol testing of employees who are selected from any of the following pools of employees:

(1) The entire employee population at a particular work site of the employer except for employees not subject to testing pursuant to a collective bargaining agreement, or employees who are not scheduled to be at work at the time the testing is conducted because of the status of the employees or who have been excused from work pursuant to the employer’s work policy prior to the time the testing is announced to employees.

(2) The entire full-time active employee population at a particular work site except for employees not subject to testing pursuant to a collective bargaining agreement, or employees who are not scheduled to be at work at the time the testing is to be conducted because of the status of the employee or who have been excused from work pursuant to the employer’s working policy.

(3) All employees at a particular work site who are in a pool of employees in a safety-sensitive position and who are scheduled to be at work at the time testing is conducted, other than employees not subject to testing pursuant to a collective bargaining agreement, or employees who are not scheduled to be at work at the time the testing is to be conducted or who have been excused from work pursuant to the employer’s work policy prior to the time the testing is announced to employees.

Iowa Code 730.5(1)(I) states:

“Unannounced drug or alcohol testing” means testing for the purposes of detecting drugs or alcohol which is conducted on a periodic basis, without advance notice of the test to employees, other than employees whose duties include responsibility for administration of the employer’s drug or alcohol testing program, subject to testing prior to the day of testing, and without individualized suspicion. The selection of employees to be tested from the pool of employees subject to testing shall be done based on a neutral and objective selection process by an entity independent from the employer and shall be made by a computer-based random number generator that is matched with employees’ social security numbers, payroll identification numbers, or other comparable identifying numbers in which each member of the employee population subject to testing has an equal chance of selection for initial testing, regardless of whether the employee has been selected or tested previously. The random selection process shall be conducted through a computer program that records each selection attempt by date, time, and employee number.

In this case, the employer only conducts random drug tests on employees who have previously tested positive for drugs or alcohol. The employer does this pursuant to a policy that is not included in a collective bargaining agreement. Iowa Code 730.5(8)(a) authorizes employer to conduct unannounced or “random” tests on three pools of employees—all employees, all full-time active employees, or all employees working in a safety sensitive position *other than*

*employees not subject to testing pursuant to a collective bargaining agreement.* Employer has presented no evidence that a collective bargaining agreement exempts all employees who have not previously tested positive for drugs and alcohol from random drug tests. Thus, the employer was not authorized to conduct random drug testing of the pool of employees in question. The employer conducted an unauthorized drug test of the claimant. The employer cannot benefit from an unauthorized drug screen as a basis for disqualification from benefits. Therefore, benefits are allowed.

**DECISION:**

The August 18, 2016, (reference 01) unemployment insurance decision is reversed. Claimant was separated for no disqualifying reason. Claimant is eligible to receive unemployment insurance benefits, provided claimant meets all other eligibility requirements.

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Christine A. Louis  
Administrative Law Judge  
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Decision Dated and Mailed

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