

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BOBBY SALES

Claimant

APPEAL NO. 10A-UI-07594-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

MANPOWER INTERNATIONAL INC

Employer

Original Claim: 04-25-10

Claimant: Appellant (2)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the May 20, 2010, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on July 13, 2010. The claimant participated in the hearing. Kim Saskowski, Branch Manager, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time warehouse laborer for Manpower last assigned to Ceva Logistics from June 18, 2008 to April 26, 2010. He received a copy of, and signed for, the employer's drug and alcohol policy June 19, 2008 and November 5, 2009. Ceva Logistics was considering hiring the claimant as their own full-time employee and therefore required him to submit to a drug test. He was sent to a local doctor's office immediately after work to have the test, which was conducted in sanitary and private conditions. He does not recall if the sample was split and does not believe the doctor's office gave him the opportunity to provide information on anything that might cause a positive test, such as prescription or over-the-counter medication. He was not told which drugs the drug screen would be testing for either verbally or in writing. The claimant does not know if the first test was confirmed by a second test. The doctor notified the claimant he tested positive because he had traces of marijuana in his system. The claimant testified he was around friends who were smoking marijuana the previous evening but did not smoke any himself. He received a certified letter from Ceva Logistics and was notified he could have the sample retested at his own expense. He was aware of the employer's written drug testing policies; and after he was notified his assignment at Ceva Logistics was over because of the positive drug test, he called the employer and informed it of the end of his assignment for not passing his drug screen. The employer told him his employment with Manpower was over as well, because it has a zero tolerance on positive drug test results.

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:

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 misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. While the claimant testified he had a positive drug screen for marijuana, he did not know if several of the steps of the testing procedure were followed as required by Iowa law. Although the employer participated in the hearing, the witness was not able to provide any details about the testing procedure and, consequently, could not prove that the testing requirements were followed to the degree demanded by Iowa law, and it is not the claimant's responsibility or burden to prove the testing procedure was done correctly. Under these circumstances, the administrative law judge must conclude the employer has not met its burden of proving the testing requirements were followed and, therefore, cannot prove disqualifying job misconduct occurred as defined by Iowa law. Benefits must be allowed.

DECISION:

The May 20, 2010, reference 01, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/kjw