

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

BARBARA J LEIFKER
823 PERSHING BLVD
CLINTON IA 52732

LA LEASING INC
SEDONA STAFFING
612 VALLEY DR
MOLINE IL 61265

Appeal Number: 06A-UI-00167-HT
OC: 11/27/05 R: 04
Claimant: Respondent (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The employer, Sedona Staffing, filed an appeal from a decision dated December 29, 2005, reference 02. The decision allowed benefits to the claimant, Barbara Leifker. After due notice was issued, a hearing was held by telephone conference call on January 23, 2006. The claimant participated on her own behalf. The employer participated by Unemployment Benefits Administrator Colleen McGuinty and Account Manager Kelly Zeimet

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Barbara Leifker began working for Sedona Staffing

on April 25, 2005. She was assigned to the City of Clinton Parks Department. That assignment ended on November 23, 2005.

On December 5, 2005, Account Manager Kelly Zeimet contacted the claimant for a new assignment at Romeo Rim. She was asked to come into the Sedona Staffing office so she could receive the policies and procedures for the client company. When she arrived, the account manager told her she would have to have a pre-employment drug screening per the client's requirements.

Sedona Staffing administers a test in its office, the account managers having been given training by the corporation. The urine sample is taken in a cup which will chemically react if there are any controlled substances in the sample. Ms. Leifker tested positive for THC. Per the company policy she was offered a second test at a medical clinic, which would then be tested by a medical review officer. It would cost \$40.00.

Ms. Leifker said she did not have the \$40.00 at that time but could possibly get the money from her spouse after 5:00 p.m. Ms. Zeimet insisted the testing must be done that day and failure to take the second test would be considered a voluntary quit. The claimant signed a document saying she declined the second test only because she did not have the necessary fund. However, the form also says the test may be performed in the next five days. Because she did not have the money available on that day, the claimant was considered a voluntary quit.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes she is not.

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).

There is insufficient evidence in the record to support the employer's contention that the claimant quit. She was given a drug screening and offered a second test when the first came back positive for a controlled substance. From all appearances, the claimant was willing to take a second test but did not have the money immediately available.

The employer's own document states an individual has five days to take a second test, and the employer's witness could provide no adequate explanation as to why this policy was being violated by the employer when it insisted the second test be done that same day. This is especially problematic, as the account manager did not tell Ms. Leifker that she would possibly need to have money available when she came into the office. In fact, the employer did not even notify the claimant she was going to be given a drug test until she arrived.

The record establishes the claimant was discharged for not having the money available to take a second drug test the same day she was given the first test. The failure to allow the claimant the opportunity to have the test within five days, as stated in the employer's policies, does not constitute substantial, job-related misconduct, and disqualification may not be imposed.

DECISION:

The representative's decision of December 29, 2005, reference 02, is affirmed. Barbara Leifker is qualified for benefits provided she is otherwise eligible.

bgh/kjw