

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RYAN M WILLIAMS
Claimant

APPEAL NO. 09A-UI-05126-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

JACOBSON INDUSTRIAL SERVICES
Employer

**Original Claim: 03/01/09
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated March 20, 2009, reference 01, that concluded he voluntarily quit employment without good cause attributable to the employer. A telephone hearing was held on April 29, 2009. The parties were properly notified about the hearing. The claimant participated in the hearing. Elizabeth Jerome participated in the hearing on behalf of the employer.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked as a laborer assigned to work at Titan Tire from April 27, 2008, to March 3, 2009. He was informed and understood that under the employer's work rules, employees were required to submit to a drug test under certain circumstances, including random testing, and were subject to termination if they tested positive for drugs or refused to provide a urine sample.

Pursuant to the policy, the claimant was required to submit to an unannounced random drug test on March 3, 2009, at the Titan Tire plant. A collector from the occupational health center the employer uses for drug testing gave the claimant a cup to provide a sample. The claimant provided a sample of urine and did nothing to alter or dilute the sample.

The cup had a gauge that displayed the urine's temperature. When the claimant gave the sample to the collector, he could see the sample registered over 90 degrees. The collector, however, poured the sample into another container and announced that it was a cold sample. The claimant told the collector that he wanted to speak with a supervisor because he saw that the sample was over 90 degrees and she had cooled the sample by pouring it in another cup. The collector was directed profanity toward the claimant and told him that if he moved, she would have him fired.

The claimant used his cell phone to call his supervisor, Nate Cloe. When Cloe arrived, the claimant tried explaining what had happened. The collector told Cloe that he could terminate

the claimant or have him give another sample. Cloe asked the claimant if he would provide another sample. The claimant responded no because it was ridiculous and the collector should not have messed with the first sample. Cloe then told the claimant that he had to punch out and leave. The claimant was escorted off the premises and reasonably believed he had been fired.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent, or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing the credibility of the witnesses and the reliability of the evidence and by applying the proper standard and burden of proof. The claimant testified credibly and the employer's evidence consisted solely of hearsay. I believe the claimant's testimony. Based on his testimony, I believe he was justified in not providing another sample after the collector's unprofessional behavior. No willful and substantial misconduct has been proven in this case.

DECISION:

The unemployment insurance decision dated March 20, 2009, reference 01, is reversed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/kjw