

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JEFFREY S ATHEY**  
Claimant

**APPEAL NO. 10A-UI-13032-H2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SPEEDCO INC**  
**SPEEDCO TRUCK LUBE**  
Employer

**OC: 07-18-10**  
**Claimant: Respondent (1)**

Iowa Code § 96.5(2)a – Discharge/Misconduct  
Iowa Code § 730.5 – Private sector drug-free workplaces

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the September 8, 2010, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on November 2, 2010. The claimant did participate. The employer did participate through Gary Reed, General Manager. Employer's Exhibit One was entered and received into the record.

**ISSUE:**

Was the claimant discharged due to job-related misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a technician full time beginning August 9, 2008 through July 14, 2010 when he was discharged. The claimant and all of his coworkers were ordered to take what the employer called a "reasonable suspicion" drug test on July 6. The employer had no specific information that the claimant was using drugs or alcohol on that day and did not establish any grounds for ordering the claimant or any of his coworkers to take the drug test.

The claimant was not notified by certified mail of his right to have the split sample tested at his expense nor was he notified by certified mail of his 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 § 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 give notice of the test results according to the strict and explicit statutory requirements, and failed to allow him 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 September 8, 2010, reference 01, decision is affirmed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible.

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Teresa K. Hillary  
Administrative Law Judge

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Decision Dated and Mailed

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