

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

NATASIA S DILLARD
Claimant

REMEDY INTELLIGENT STAFFING INC
Employer

APPEAL NO. 14A-UI-09562-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 08/24/14
Claimant: Respondent (1)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated September 10, 2014, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on October 6, 2014. The parties were properly notified about the hearing. The claimant participated in the hearing. Julie Coughlin participated in the hearing on behalf of the employer.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The employer is a staffing company that provides workers to client businesses on a temporary or indefinite basis. The claimant worked for the employer from January 27, 2011, to August 29, 2014. Her last assignment was working on an assignment at General Mills.

While the employer's online policy has rules prohibiting the use of alcohol or drugs, the employer does not have a written drug or alcohol testing policy that has been provided to every employee subject to testing. There is no written policy that provides uniform requirements for what disciplinary or rehabilitative actions an employer shall take against an employee or prospective employee upon receipt of a confirmed positive test result for drugs or alcohol or the refusal to provide a testing sample. The employer does not have an employee assistance program or resource file of substance abuse programs for referral purposes. Supervisory personnel with the employer have not attended training on recognizing drug and alcohol abuse or referral of employees to an employee assistance program or substance abuse program.

On July 18, 2014, the claimant cut her finger at work, which caused the employer to require the claimant to provide a urine sample for testing. A urine sample was taken from the claimant and sent to a laboratory for testing. It is not known if an initial drug screen test and subsequent confirmatory test was done by a certified laboratory or whether the sample was split to allow a test of the second sample. About a week and a half later, the claimant was called by someone

involved in the drug testing and told that she had tested positive for marijuana. It is not known whether the drug test results were reviewed and interpreted by a medical review officer.

For some reason, the results of the drug test were not provided to the employer until August 25, 2014. The employer then discharged the claimant for testing positive for marijuana.

The discharge was verbal. No letter by certified mail, return receipt requested, was sent to inform the claimant about the result of the test and her right to have a split sample tested.

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 Iowa Supreme Court has ruled that an employer cannot establish disqualifying misconduct based on a drug test performed in violation of Iowa's drug testing laws. *Harrison v. Employment Appeal Board*, 659 N.W.2d 581 (Iowa 2003); *Eaton v. Employment Appeal Board*, 602 N.W.2d 553, 558 (Iowa 1999). As the court in *Eaton* stated, "It would be contrary to the spirit of chapter 730 to allow an employer to benefit from an unauthorized drug test by relying on it as a basis to disqualify an employee from unemployment compensation benefits." *Eaton*, 602 N.W.2d at 558.

Iowa Code chapter 730.5 requires employers to follow certain conditions to test employees for drugs and alcohol. The employer's testing in this case violated chapter 730.5 in the following ways. The employer does not have a written drug or alcohol testing policy that has been provided to every employee subject to testing. No written policy exists that provides uniform requirements for what disciplinary or rehabilitative actions an employer shall take against an employee or prospective employee upon receipt of a confirmed positive test result for drugs or alcohol or the refusal to provide a testing sample. The employer does not have an employee assistance program or resource file of substance abuse programs for referral purposes. Supervisory personnel with the employer have not attended training on recognizing drug and alcohol abuse or referral of employees to an employee assistance program or substance abuse program. There is no evidence that an initial drug screen test and subsequent confirmatory test was done by a certified laboratory or whether the sample was split to allow a test of the second sample. There is no evidence that the drug test results were reviewed and interpreted by a medical review officer before the results were given to the employer. No letter sent by certified mail, return receipt requested was sent to inform her about the result of the test and her right to have a split sample tested. Since the testing violated Iowa law, the claimant is not subject to disqualification in this case.

DECISION:

The unemployment insurance decision dated September 10, 2014, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/css