

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BAMBI K WEDEMEIER
Claimant

APPEAL NO. 07A-UI-02429-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**LA LEASING
SEDONA STAFFING**
Employer

**OC: 01/14/07 R: 04
Claimant: Respondent (2)**

Section 96.5(2)a – Discharge
Section 96.3(7) – Overpayment

STATEMENT OF THE CASE:

The employer, Sedona Staffing, filed an appeal from a decision dated March 1, 2007, reference 02. The decision allowed benefits to the claimant, Bambi Wedemeier. After due notice was issued, a hearing was held by telephone conference call on March 27, 2007. The claimant did not provide a telephone number where she could be contacted and did not participate. The employer participated by Unemployment Benefits Administrator Colleen McGuinty and Account Coordinator Sherri Kubly.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Bambi Wedemeier was employed by Sedona Staffing from September 18 until December 6, 2006. Her last assignment began on October 9, 2006, at CVG and was a temp-to-hire job. At the time of hire the claimant received the employer's policies and procedures, which included the drug policy.

On November 23, 2006, the claimant was involved in a work-related accident but did not notify Account Coordinator Sherri Kubly until the next day. Ms. Wedemeier gave a urine sample at the Regional Medical Center in Manchester, Iowa, on November 24, 2006, but since the facility was not set up for a split sample, another sample was given November 24, 2006.

The medical review officer interviewed the claimant about a positive test for marijuana, and then the employer's Dubuque, Iowa, office was notified of the test results on December 6, 2006. Ms. Kubly talked to the claimant on the phone about the test results and her right to have the sample retested. The claimant stated she already knew the second test would come back "dirty" because she had been smoking marijuana and she knew it had been a "stupid" thing to do.

The claimant was sent a letter by certified mail on December 6, 2006, notifying her of the separation and her right to have the split sample retested at a laboratory of her choice. The United States Postal Service tried to deliver it four times, it was returned as unclaimed.

Bambi Wedemeier has received unemployment benefits since filing a claim with an effective date of January 14, 2007.

REASONING AND CONCLUSIONS OF LAW:

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's drug policy notified the claimant of the consequences of being under the influence of controlled substances while at work. The test results came back positive and the claimant admitted to having smoked marijuana and declined the second test. In addition, the employer properly notified her by certified mail but she refused delivery. The employer has the obligation to provide a safe and harassment-free work environment for all employees and the claimant's conduct interfered with its ability to do so. This is conduct not in the best interests of the employer and the claimant is disqualified.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The claimant has received unemployment benefits to which she is not entitled. These must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's decision of March 1, 2007, reference 02, is reversed. Bambi Wedemeier is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount, provided she is otherwise eligible. She is overpaid in the amount of \$1,420.00.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/kjw