

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MATTHEW K MAXWELL
Claimant

APPEAL 18A-UI-05799-CL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

MENARD INC
Employer

**OC: 04/29/18
Claimant: Respondent (2)**

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

STATEMENT OF THE CASE:

The employer filed an appeal from the May 15, 2018, (reference 02) unemployment insurance decision that allowed benefits based upon a separation from employment. The parties were properly notified about the hearing. A telephone hearing was held on June 12, 2018. Claimant did not register for the hearing and did not participate. Employer participated through general manager Tom Groepper and was represented by attorney Paul Hammell. Employer's Exhibit 1 was received. Official notice was taken of the administrative record.

ISSUES:

Was the claimant discharged for disqualifying job-related misconduct?
Has the claimant been overpaid unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?
Can charges to the employer's account be waived?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Employer offered claimant a position as a part-time sales associate contingent on submitting a urine sample that tests negative for illegal drugs and alcohol. Employer has a drug and alcohol policy that explains the terms of this practice. Claimant was made aware of this policy and received a copy of this policy when the job offer was made.

On April 10, 2018, claimant provided a sample to a third party who provides testing services for employer. On April 11, 2018, claimant completed a two or three hour orientation, for which he was paid wages. Shortly thereafter, employer was notified that claimant's sample tested positive for amphetamines. Employer attempted to call claimant to notify him of the test results, but it was unable to reach him.

On April 18, 2018, employer sent claimant a letter by certified mail stating his sample tested positive for amphetamines and notifying him of his right to request a copy of the records related to the testing. Claimant received the letter.

Claimant did not respond to the letter and did not attempt to return to work.

Claimant has not received any benefit payments since filing a claim with an effective date of April 29, 2018.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proving disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). Whether an employee violated an employer's policies is a different issue from whether the employee is disqualified for misconduct for purposes of unemployment insurance benefits. See *Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661, 665 (Iowa 2000) ("Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of benefits." (Quoting *Reigelsberger*, 500 N.W.2d at 66.)).

In this case, claimant was asked and consented to undergo a drug and alcohol test as a prospective employee. Claimant was allowed to attend orientation, and was compensated for that time, prior to employer's receipt of his test results.

Iowa Code section 730.5(4) allows employers to test employees and prospective employees for drugs and/or alcohol but requires the employer "adhere to the requirements . . . concerning the conduct of such testing and the use and disposition of the results." The employer has met the requirements of Iowa Code section 730.5. The claimant did receive a copy of employer's drug and alcohol use policy. He was tested at a certified testing facility on a pre-employment basis in accordance with the policy. The drug screen was positive for amphetamine/methamphetamine. Claimant was notified of the test results and his right to request records by certified mail. Employees are required to be drug free in the workplace. The violation of the known work rule constitutes misconduct as it presents a safety hazard to the employee and the general public and potential liability for the employer. Benefits must be denied.

Claimant has not received any benefit payments since filing a claim with an effective date of April 29, 2018. Therefore, the issues regarding overpayment of benefits are moot and will not be discussed further in this decision.

DECISION:

The May 15, 2018, (reference 02) unemployment insurance decision is reversed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

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Decision Dated and Mailed

cal/scn