

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

ANNETTE M LOERCH
Claimant

APPEAL NO: 20A-UI-03603-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

NEW COOPERATIVE INC
Employer

OC: 03/29/20
Claimant: Respondent (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the April 27, 2020, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on May 21, 2020. The claimant participated in the hearing. Lynn Dreyer, Human Resources Manager; Justin Sulman, Plant Manager; and Justin Reuter, Human Resources Coordinator; participated in the hearing on behalf of the employer and were represented by Attorney Stuart Cochrane. Employer's Exhibits One through Three were admitted into evidence.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time feed mill operator for New Cooperative from December 10, 2018 to March 6, 2020. She was discharged for failing a non-work related drug test.

On March 2, 2020, the claimant contacted Plant Manager Justin Sulman and notified him she failed a drug test administered by her parole officer. The employer suspended the claimant pending further investigation. On March 3, 2020, Human Resources Coordinator Justin Reuter called the claimant's parole officer and she confirmed the claimant was given a random drug screen and the test was positive. The employer determined the claimant's actions were a violation of its drug and alcohol policy (Employer's Exhibit One). The employer composed a letter to send to the claimant notifying her that her employment was terminated but was not sure where to send it (Employer's Exhibit Three). On March 6, 2020, the claimant called Mr. Reuter and he informed her of her termination.

The claimant testified she tested positive for methamphetamine when called in by her parole officer for a random drug test. Her parole officer encouraged her to "do the right thing" and notify the employer so she called Mr. Sulman and told him she failed a drug screen.

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 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).

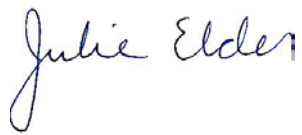
The employer has the burden of proving disqualifying misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 665 (Iowa 2000). The misconduct must also be work-related.

While the employer's decision to terminate the claimant's employment is understandable, it did not administer the random drug test or test her based on a reasonable suspicion. The drug test the claimant submitted to was administered by her parole officer and self-reported by the

claimant. Had the employer requested that the claimant take a reasonable suspicion drug test, after being notified she failed a test given by her parole officer, and complied with state law and its drug and alcohol policy, it could have terminated the claimant's employment. As it stands, however, this was not a work-related incident. Therefore, benefits must be allowed.

DECISION:

The April 27, 2020, reference 01, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.



Julie Elder
Administrative Law Judge

May 26, 2020
Decision Dated and Mailed

je/scn