

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MARGARET N SIEGWARTH**  
Claimant

**APPEAL NO: 18A-UI-09115-JC-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**PER MAR SECURITY & RESEARCH CORP**  
Employer

**OC: 08/20/17**  
**Claimant: Respondent (1)**

Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Code § 730.5 – Private Sector Drug-free Workplaces  
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 August 20, 2018, (reference 03) unemployment insurance decision that allowed benefits. A first hearing was scheduled on September 20, 2018 with Administrative Law Judge, Terry P. Nice. Due to technical difficulties, the hearing was continued without testimony to October 10, 2018. On October 10, 2018, after proper notice, the parties were called for the hearing by ALJ Nice. The claimant's roommate requested a postponement on her behalf, due to the claimant being hospitalized that day unexpectedly.

The parties were properly notified about the third hearing. A telephone hearing was held on October 24, 2018 with Administrative Law Judge, Jennifer L. Beckman. The claimant participated personally. The employer participated through Randy Mulder, general manager.

The administrative law judge took official notice of the administrative records including the fact-finding documents. Department Exhibit A and Employer Exhibit 1 were received into evidence without objection. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**Note to claimant:** Please contact IWD at 866-239-0843 to update your address of record.

**ISSUES:**

Was the claimant discharged for disqualifying job-related misconduct?  
Has the claimant been overpaid any unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?  
Can any 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: The claimant was employed full-time as a security guard and was separated from employment on July 30, 2018, when she was discharged for failing a post-accident drug screening (Employer Exhibit 2).

The employer has a written drug and alcohol screening policy, which alerts employees they may be requested to submit to a drug screening under certain conditions, including after an accident at the workplace (Department Exhibit A). The claimant signed a receipt of acknowledgement for the employer rules upon hire (Employer Exhibit 5).

On July 21, 2018, the claimant was involved in an OSHA reportable accident. The claimant submitted to a urine screening at the Clarke County Hospital, which tested positive for methamphetamine and amphetamines (Employer Exhibit 1). The results were not provided to claimant in writing delivered by certified mail, return receipt requested. The claimant was not offered a split sample test. The claimant denied drug usage before or during work. The claimant was subsequently discharged.

The administrative record reflects that claimant has received unemployment benefits in the amount of \$139.00, since filing a claim after her separation on July 30, 2018, with an official claim date of August 20, 2017. The administrative record also establishes that the employer did not participate in the fact-finding interview or make a witness with direct knowledge available for rebuttal. The employer's vendor, Equifax/Talx UCM Services, provided the name and phone number of David Lee, operations manager, to participate. He did not attend or respond to the voicemail. Mr. Mulder did not have additional information available about Mr. Lee's non-participation.

## **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 law disqualifies individuals who are discharged from employment for misconduct from receiving unemployment insurance benefits. Iowa Code § 96.5(2)a. They remain disqualified until such time as they requalify for benefits by working and earning insured wages ten times their weekly benefit amount. *Id.*

Iowa Administrative Code rule 871-24.32(1)a provides:

"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).

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.” 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 return receipt requested, 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 Emp’t Appeal Bd.*, 602 N.W.2d 553, 557, 558 (Iowa 1999).

While the employer certainly was within its rights to test and fire the claimant, it failed to provide her sufficient notice of the test results, or an opportunity for a split sample test according to the strict and explicit statutory requirements. Thus, the employer cannot use the results of the drug screen as a basis for disqualification from benefits and benefits are allowed.

Nothing in this decision should be interpreted as a condemnation of the employer’s right to terminate the claimant for violating its policies and procedures. The employer had a right to follow its policies and procedures. The analysis of unemployment insurance eligibility, however, does not end there. This ruling simply holds that the employer did not meet its burden of proof to establish the claimant’s conduct leading to separation was misconduct under Iowa law.

Because the claimant is eligible for benefits, the issues of overpayment and relief of charges are moot.

**DECISION:**

The August 20, 2018, (reference 03) decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible.

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Jennifer L. Beckman  
Administrative Law Judge

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Decision Dated and Mailed

jlb/scn