

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANTHONY NEWELL
Claimant

APPEAL NO. 13A-UI-11567-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CUSTOM-PAK INC – LP2
Employer

OC: 09/08/13
Claimant: Appellant (1)

Iowa Code § 96.5(2)(a) - Discharge for Misconduct

STATEMENT OF THE CASE:

Anthony Newell (claimant) appealed an unemployment insurance decision dated October 1, 2013, reference 01, which held that he was not eligible for unemployment insurance benefits because he was discharged from Custom Pak, Inc. – LP2 (employer) for work-related misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on November 6, 2013. The claimant did not participate in the hearing. He provided a telephone number and the number was called two times but there was no answer and no answering machine. The employer participated through Andrea Lawrence, Human Resources Manager.

ISSUE:

The issue is whether the claimant was discharged for work-related misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a full-time machine operator from April 13, 2010 through June 17, 2013 when he was discharged for violation of the employer's drug and alcohol policy. The employer has a written drug policy that informs employees of the drug testing procedures and for which drugs the employer will be testing. At the time of hire, the claimant signed for receipt of the policy and gave his permission to be drug tested. He was chosen on a random basis to be drug tested on June 11, 2013. Clinton Occupational Health came to the employer's facility and used a MedTox Profile 2 test kit in which they took a split sample of urine. The side of the cup has instant results which indicate whether the sample needs to be sent for further testing. The claimant's sample needed to be sent for further testing and he was suspended pending the outcome of the test.

Medical Review Officer Dr. Mary Shook notified the claimant on June 17, 2013 that he tested positive for marijuana. The claimant was questioned if there was any other reason why he would have tested positive for marijuana and there was not. The MRO contacted the employer and informed them of the positive results. The employer sent the claimant a certified letter advising him he was terminated due to testing positive for marijuana. The claimant was also advised he had the option to have the secondary sample retested at his expense and if he was

interested in this, he needed to provide the employer with a written request. The claimant did not elect to have the secondary sample tested.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-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. 871 IAC 24.32(1).

The employer has the burden to prove the discharged employee is disqualified for benefits for misconduct. *Sallis v. Employment Appeal Bd.*, 437 N.W.2d 895, 896 (Iowa 1989). The claimant was discharged on June 17, 2013 for violation of the employer's drug and alcohol policy due to his positive drug test for marijuana. Iowa Code § 730.5 sets forth the rules by which a private company may screen its employees for use of illegal drugs. The employer has a written drug testing policy per Iowa Code § 730.5(9)(b) and tested the claimant on a random basis. The claimant was advised of the drugs to be tested and was given the opportunity to advise the medical review officer of any drugs he was taking that might have affected the outcome. Iowa Code § 730.5(7)(c)(2).

The test was performed during the workday by medical personnel within the facility and split samples were taken at the time of collection. Iowa Code §§ 730.5(6) and (7)(a-c). A medical review officer reviewed and interpreted the confirmed positive test result and notified the claimant of the positive results before reporting the results to the employer; Iowa Code § 730.5(7)(g). The medical review officer reported that no medications the claimant was taking could have given a positive test result for cocaine. The claimant was notified by certified mail, return receipt requested of the positive result and his right to obtain a confirmatory test of the secondary sample but elected not to do so. Iowa Code § 730.5(7)(i)(1) and (2).

In order for a violation of an employer's drug or alcohol policy to be disqualifying misconduct, it must be based on a drug test performed in compliance with Iowa's drug testing laws. *Eaton v. Iowa Employment Appeal Board*, 602 N.W.2d 553, 558 (Iowa 1999). The employer has met the requirements of Iowa Code § 730.5. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

DECISION:

The unemployment insurance decision dated October 1, 2013, reference 01, is affirmed. The claimant is not eligible to receive unemployment insurance benefits because he was discharged from work for misconduct. Benefits are withheld until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/pjs