

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRAD E BIGGS

Claimant

APPEAL NO. 09A-UI-09599-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

PRO COOPERATIVE

Employer

OC: 06/25/09

Claimant: Appellant (1)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated June 25, 2009, reference 01, that concluded he was discharged for work-connected misconduct. A telephone hearing was held on July 21, 2007. The parties were properly notified about the hearing. The claimant participated in the hearing. Mark Hambleton participated in the hearing on behalf of the employer.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked for the employer as a truck driver from October 20, 2007, to May 19, 2009. The claimant was informed and understood that under the employer's work rules, he was required to submit to a drug test under certain circumstances, including random drug tests, and was subject to termination after he had two strikes (drug-related events) against him. The claimant was subject to the United States Department of Transportation drug testing requirements.

On October 30, 2008, the claimant was arrested for possession of drug paraphernalia and marijuana. When the employer learned of the arrest, the claimant was counseled about staying away from drugs and told this would count as a strike on November 4. He ended up pleading guilty to possession of drug paraphernalia and the marijuana charge was dropped.

On May 19, 2009, the claimant was randomly selected for a DOT drug test. The claimant provided a urine sample at a local hospital, which was split for testing purposes. The sample was tested at a certified laboratory in compliance with DOT requirements. The test disclosed the presence of marijuana in the claimant's system at a level considered positive under DOT requirements. The laboratory reported the results to the medical review officer. The officer contacted the claimant and informed him about the positive test results and his right to have the split sample tested. The officer asked the claimant about prescription drugs he was taking.

After contacting the claimant, the officer verified the positive test result and reported it to the employer.

Based on the positive drug test result and the prior drug-related offense, the employer discharged the claimant on May 22, 2009.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

Iowa Code § 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 Iowa Supreme Court has ruled that an employer cannot establish disqualifying misconduct based on a drug test performed in violation of Iowa's drug testing laws. *Harrison v. Employment Appeal Board*, 659 N.W.2d 581 (Iowa 2003); *Eaton v. Employment Appeal Board*, 602 N.W.2d 553, 558 (Iowa 1999). As the court in *Eaton* stated, "It would be contrary to the spirit of chapter 730 to allow an employer to benefit from an unauthorized drug test by relying on it as a basis to disqualify an employee from unemployment compensation benefits." *Eaton*, 602 N.W.2d at 558.

Iowa's drug testing laws, however, do not apply to employees who are required to be tested under federal law and regulations. Iowa Code § 730.5-2. Under federal regulations, truck

drivers are subject to drug and alcohol testing under certain circumstances, including random drug testing, and the federal regulations detail all the testing procedures and requirements. 49 CFR Part 382. Although there is no Iowa case precedent on this issue, it is logical that the reasoning of the *Harrison* and *Easton* cases applies so that drug testing must comply with federal law to disqualify a claimant from benefits. The evidence establishes the testing was in compliance with federal law in this case.

The claimant does not dispute the drug test results. He argues the employer should not count the drug conviction in October 2008 as his first strike and the employer continued to employ people who had failed drug tests. But the focus in an unemployment insurance case is on the claimant's conduct and whether it amounts to work-connected misconduct. The claimant violated the employer's policy by testing positive for a controlled substance and the employer was required to disqualify him from driving under federal law. Work-connected misconduct by the claimant has been proven in this case.

DECISION:

The unemployment insurance decision dated June 25, 2009, reference 01, is affirmed. The claimant is disqualified from receiving unemployment insurance benefits until he has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/css