

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**BROCK N PHILLIPS**  
Claimant

**APPEAL NO. 07A-UI-01719-S2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OMEGA CABINETS**  
Employer

**OC: 12/24/06 R: 03  
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Brock Phillips (claimant) appealed a representative's February 13, 2007 decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits because he was discharged from work with Omega Cabinets (employer) for violation of a known company rule. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 6, 2007. The claimant participated personally. The employer did not provide a telephone number where it could be reached and, therefore, did not participate. Aaron Rossum, former co-worker, observed the hearing.

**ISSUE:**

The issue is whether the claimant was discharged for 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 hired on October 8, 2001, as a full-time material handler. The claimant received a copy of the company's Drug Policy. In December 2006, the claimant walked outside to get keys from his friend's car. The employer did not believe the claimant and requested the claimant submit to a reasonable suspicion drug test. The claimant went to the hospital and submitted a sample for urinalysis. The claimant received the results by certified mail on or about January 6, 2007. He tested positive for using marijuana. Later the employer terminated the claimant for being under the influence of an illegal substance.

The claimant argued that he used marijuana in high school but he had changed since then. He did use at a party approximately two weeks prior to the urinalysis.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow the administrative law judge concludes the claimant was discharged for misconduct.

Iowa Code section 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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The claimant was terminated for violating the employer's drug policy. The claimant knew that any positive results on a random drug test would result in termination. The employer is entitled to take random drug testing and to discharge upon the receipt of a positive result. The claimant failed to present any substantive evidence of a reason for a false positive. The claimant was discharged for misconduct in connection with his work. He is not qualified to receive unemployment insurance benefits.

**DECISION:**

The representative's February 13, 2007 decision (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 has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

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