

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

MARK J MCGRANE
Claimant

ATLANTIC BOTTLING CO
Employer

APPEAL NO. 21A-UI-25141-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 09/26/21
Claimant: Appellant (1)**

Iowa Code § 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated November 5, 2021, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on January 11, 2022. Claimant participated personally. Employer participated by Anne Marie Johnson, Doug Brunching and Doug Jansen. Employer's Exhibits 1-5 were admitted into evidence.

ISSUE:

The issue in this matter is whether 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: Claimant last worked for employer on September 12, 2021.

Employer discharged claimant on September 21, 2021 because claimant tested positive for marijuana and methamphetamine under employer's random testing policy.

Claimant worked as a merchandiser for employer. On September 8, 2021 claimant was contacted and asked to give a UA sample at Quest in order for it to be randomly drug tested. Claimant had the drug test, and days later he was alerted that his test had come back as positive for marijuana and methamphetamine as a lab tester called and spoke with claimant. He was told by his supervisor that he was being terminated for the positive drug test.

Employer attempted to send claimant documents surrounding his positive drug test, ability to request split sample testing, and treatment options through a certified letter. As claimant had not updated his address with employer, it was sent to a previous address, and the certified letter was never signed for.

At the time of claimant's hire, he signed for and received an employee handbook, indicating among other things, the procedure for drug testing and consequences of a positive drug test.

REASONING AND CONCLUSIONS OF LAW:

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).

In this matter, the evidence established that claimant was discharged for an act of misconduct when claimant violated employer's policy concerning drug testing.

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 section 730.5(8) sets forth the circumstances under which an employer may test employees for the presence of drugs. Claimant was randomly selected for unannounced testing and was not tested as part of drug rehabilitation. See section 730.5(8)a, b.

The definition of "reasonable suspicion" is found at section 730.5(1)h. The employer acknowledged that there had been no observations of Claimant at work that would lead to the conclusion that claimant was using drugs. The employer did not cite any abnormal conduct or

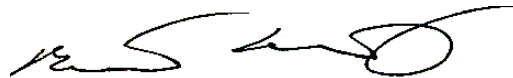
erratic behavior while at work or any significant deterioration in his job performance. There was no suggestion that claimant had tampered with any drug test during this employment or was involved in any accident while at work. There was no evidence that claimant manufactured, sold, or used drugs while at work or while operating the employer's vehicle. The only reason the employer tested claimant was the claimant's name was randomly generated through the third party employer uses to determine which employee's will be randomly tested.

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 and the right to obtain a confirmatory test.

The last incident, which brought about the discharge constitutes misconduct because claimant was sent notice of his rights by certified mail. There is no alternate method of notice allowed. The Iowa Courts have held that certified mail notice is mandatory. *Harrison v. Employment Appeal Board*, 659 N.W.2d 581 (IA 2003). Here, employer properly followed procedures in random choice to test claimant, and followed procedures in attempting to give notice to claimant of his positive test through certified mail. The fact that claimant had not updated his address is not the fault of employer. The administrative law judge holds that claimant was discharged for an act of misconduct and, as such, is disqualified for the receipt of unemployment insurance benefits.

DECISION:

The decision of the representative dated November 5, 2021, reference 01, is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.



Blair A. Bennett
Administrative Law Judge

February 3, 2022
Decision Dated and Mailed

bab/scn