

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

STACY R WEEKS
Claimant

MENARD INC
Employer

APPEAL 20A-UI-02281-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 02/23/20
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

Stacy Weeks (claimant) appealed a representative's March 10, 2020, decision (reference 01) that concluded ineligibility to receive unemployment insurance benefits after a separation from work with Menard (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 27, 2020. The claimant participated personally. The employer was represented by Paul Hammell, Attorney at Law, and participated by Douglas Yeoman, General Manager. The employer offered and Exhibits One through Five were received into evidence.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

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 August 25, 1994, and at the end of her employment she was working as a full-time cabinets and appliance manager. She signed for receipt of the employer's handbook on March 7, 2000. The employer's policies included a Drug-Free Workplace Policy.

The policy states, "If the test of a current Team Member is confirmed positive, Menards will notify the Team Member in writing by certified mail, return receipt requested, of the results of the test, the Team Member's right to request and obtain a confirmatory test of the second portion of the sample previously collected at an approved laboratory of his or her choice, and the fee payable by the Team Member to Menards for reimbursement of the costs associated with the second confirmatory test." (Exhibit Five, Page Six).

The policy goes on to state, "Team Members who engage in any of the prohibited conduct listed above are in violation of this Policy and are subject to discipline, up to and including termination and at Menards' sole discretion." (Exhibit Five, Page Ten).

On February 5, 2020, the claimant tripped over a pallet in the middle of the aisle and injured her right knee. She went to the employer's doctor and was urine tested for drugs and alcohol. On February 10, 2020, the general manager received a document indicating the claimant tested positive on a drug test. The drug was not indicated. The general manager suggested she call the testing company. February 10, 2020, was her last day of work.

On February 10, 2020, the claimant called the medical review officer at the testing company and discovered she tested positive for codeine. The claimant had been sick with a cough, seen her physician who offered to prescribe cough syrup. The claimant told the doctor she had some at home from a previous illness. The medical review officer told the claimant she had forty-eight hours to provide a prescription for the medicine. The claimant went to her pharmacy but the prescription was old and they could not find it. She could not make an appointment with her physician within forty-eight hours. The general manager told her there was nothing he could do about her job. On or about February 17, 2020, the general manager told her she was terminated.

After her termination, on or about February 20, 2020, the employer sent the claimant a certified letter. (Exhibit Two). It indicated the claimant's right to a confirmatory test from the split sample and the right to drug counseling. The letter said the claimant had three working days to submit additional information that might explain a positive test result. The claimant filed for unemployment insurance benefits with an effective date of February 23, 2020.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

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).

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). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984).

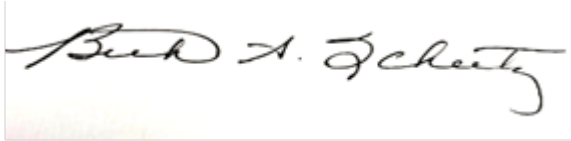
Iowa Code Section 730.5(9)b requires that an employer's policy provide uniform requirements for what disciplinary actions an employer shall take against an employee upon the receipt of a confirmed positive test result for drugs. The employer's policy states that the employer may determine what action it may take against an employee who tests positive. They could terminate or decide to take some lesser action. The policy does not have uniform guidelines and, therefore, does not comport of the Iowa Code.

Iowa Code Section 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 before taking disciplinary action against an employee. In this case, the employer terminated the claimant and then sent her a certified letter. The employer failed to give the claimant notice of the test results according to the strict and explicit statutory requirements and failed to allow him an opportunity for evaluation and treatment. 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 Employment Appeal Board*, 602 N.W.2d at 558.

In this case, the employer either did not follow its own policy or the policy did not follow the Iowa Code. Certainly, the employer has an interest in having employers appear for work who are not impaired by non-prescription influences. But the employer must follow the letter of the law. The claimant is eligible for benefits.

DECISION:

The representative's March 10, 2020, decision (reference 01) is reversed. The claimant was discharged. Misconduct has not been established. Benefits are allowed provided the claimant is otherwise eligible.

A handwritten signature in black ink, reading "Beth A. Scheetz", is positioned above a horizontal line.

Beth A. Scheetz
Administrative Law Judge

April 28, 2020
Decision Dated and Mailed

bas/scn