

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHAEL D HOOP
Claimant

APPEAL NO. 12A-UI-02447-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

HEARTLAND EXPRESS INC OF IOWA
Employer

**OC: 01/22/12
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge for Misconduct
871 IAC 24.32(1) – Definition of misconduct/Drug Testing

STATEMENT OF THE CASE:

The employer appealed a department representative's decision dated February 29, 2012, reference 01, that he was discharged for misconduct on January 29, 2012. A hearing was held on March 28, 2012. The claimant did not participate. Lea Peters, HR representative, participated for the employer. Employer Exhibit One, pages 1-19, was received as evidence.

ISSUE:

The issue is whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the employer and having considered the evidence in the record, finds that: The claimant worked as full-time over-the-road truck driver from March 3, 2009 to January 9, 2012. The claimant received the drug & alcohol policy of the employer, which contains a provision he is subject to random drug testing. The policy further provides that possession or use of an illegal drug is an employment termination offense.

The claimant was the subject of a random drug screen on January 9 pursuant to federal D.O.T. driver regulations, and he tested positive for marijuana (THC). The positive test was certified by a medical review officer who informed claimant of the result with the right to have a split-urine sample re-tested at his expense. The claimant was not sent a certified notice of the positive test nor was he advised of his right to request and to obtain a confirmatory test of a secondary sample. The claimant declined and he was terminated.

The claimant failed to respond to the hearing notice.

REASONING AND CONCLUSIONS OF LAW:

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.

The administrative law judge has reviewed the records and files herein and concludes that the employer established misconduct in the discharge of the claimant on January 12, 2012, because he failed the drug testing requisites of federal D.O.T. regulations.

The employer followed its drug testing policy according to federal D.O.T. regulations when it implemented the random drug test to claimant. When claimant tested positive for marijuana, the law requires that an employee be given written notice by certified mail of a positive drug test, and that he be advised of his right to request and obtain a confirmatory test of a secondary sample. The employer complied with the drug testing regulations when it sent claimant notice by certified mail with the right to request a confirmatory test. When claimant declined his right of a confirmatory test, he was terminated.

DECISION:

The decision of the representative dated February 29, 2012, reference 01, is affirmed. The claimant was discharged for misconduct in connection with employment on January 12, 2012. Benefits are denied until the claimant requalifies by working in and being paid wages for insured work equal to ten times his weekly benefit amount, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/kjw