

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

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ST LOUIS MO 63166-0283

Appeal Number: 04A-UI-03936-ET
OC: 03-14-04 R: 02
Claimant: Respondent (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the April 2, 2004, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on April 29, 2004. The claimant participated in the hearing. Mike Jones, Payroll Representative, participated in the hearing on behalf of the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a part-time clerk for Kum & Go from July 1, 2003 to March 11, 2004.

On March 8, 2004, the employer provided the claimant with a copy of its drug and alcohol policy and asked her to sign it. The claimant signed, but did not read, the information and following receipt of her signature, the employer informed the claimant and all the other employees with the exception of one that it was conducting a random drug test. The claimant drove herself to the testing facility and on March 11, 2004, she received a certified letter notifying her that her employment was terminated because she tested positive for marijuana.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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 proving disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Iowa Code Section 730.5 explicitly states the rules by which a private company may test its employees for use of illegal drugs. In this case, the employer did not provide any evidence establishing that it has a drug and alcohol

awareness program; an employee assistance program or a resource file; that its supervisory personnel involved in drug or alcohol testing attended a minimum of two hours of drug and alcohol training; established procedures for randomly testing employees for drugs; selected the claimant for testing using a random process or based on reasonable suspicion; used collection procedures that protected her privacy or prevented sample contamination, adulteration, or misidentification; followed proper chain of custody procedures or had the sample properly analyzed using an initial drug screen test and subsequent confirmatory test by a certified laboratory or gave the claimant an opportunity to provide information that might be considered relevant to the test, including identification of prescription or nonprescription drugs currently or recently used or other relevant medical information. Additionally, and more specifically, the employer tested all but one employee and consequently it cannot be considered a random test and there is no evidence the claimant was tested because of a reasonable suspicion she was under the influence. Under these circumstances, the administrative law judge cannot conclude the employer has met the requirements of Iowa Code Section 730.5. Therefore, even though the claimant tested positive for marijuana, benefits must be allowed.

DECISION:

The April 2, 2004, reference 01, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

je/s