

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LAWRENCE R REED
Claimant

APPEAL NO. 12A-UI-05388-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CITY OF COUNCIL BLUFFS
Employer

OC: 04-08-12
Claimant: Appellant (1)

Iowa Code §96.5(2)a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the April 30, 2012, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on June 1, 2012. The claimant did participate. The employer did participate through Ellen Stageman, Human Resources Technician. Employer's Exhibit One was entered and received into the record.

ISSUE:

Was the claimant discharged due to job connected misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a recycling aide full time beginning April 16, 2001 through March 30, 2012 when he was discharged. When the claimant reported for work on March 12 he was acting as though he was under the influence of drugs. His face was flushed and the employer had learned he was storing urine in the break room refrigerator. Earlier in the month another employee was cleaning out the break room refrigerator and found that the claimant had two stored packages of urine along with an instant hot pack that could be used to heat the refrigerated urine to body temperature. The stored urine was there so that the claimant could defeat a drug test if he were asked to take one. After finding the stored urine, noticing the claimant's decreasing job performance and his unusual behavior on March 12 the claimant was sent for a reasonable suspicion drug test under the employer's drug testing policy. The claimant had been given a copy of the employer's drug and alcohol policy and knew he was to be drug free while working for the employer. The claimants' drug test was positive for methamphetamine. At hearing the claimant admitted that he had used methamphetamine prior to reporting for work on March 12. The claimant was initially suspended and then discharged after the employer completed their investigation. The employer properly followed their own drug testing policy which is in compliance with Iowa law.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related 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.

The employer has met the requirements of Iowa Code § 730.5 because the claimant received a copy of employer's drug and alcohol use policy, he was tested as a result of his own behavior at work which gave rise to the employer's reasonable suspicion drug test. The drug test was positive for methamphetamine. The claimant is required to be drug free in the workplace. The violation of the known work rule constitutes misconduct. Benefits are denied.

DECISION:

The April 30, 2012, reference 01, decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/pjs