

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RALPH E ARTIS
Claimant

APPEAL NO: 18A-UI-01881JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

BRIDGESTONE AMERICAS TIRE
Employer

OC: 01/14/18
Claimant: Appellant (2)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the February 2, 2018, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on March 7, 2018. The claimant participated in the hearing. The employer did not respond to the hearing notice and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice.

ISSUE:

The issue is whether the employer discharged the claimant for work-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 full-time machine operator for Bridgestone Americas Tire from January 5, 1995 to December 21, 2017. He was discharged for failing a drug test.

The claimant was on a medical leave of absence for over 30 days. He returned to work December 14, 2017. Under the employer's policy, an employee who is gone for more than 30 days must submit to drug testing upon his return. The employer tested the claimant onsite just before his scheduled shift December 14, 2017. The claimant was notified of all the drugs for which he would be tested and was given an opportunity to provide any information that might affect the test results. The initial test, conducted in sanitary and private conditions with the sample split, was negative but the employer sent the samples to the lab for further testing. On December 19, 2017, the claimant was informed he tested positive for methamphetamine. The employer sent the claimant a certified letter notifying him of the test results and his right to a confirmatory test. The claimant chose to have the confirmatory test done but that test also came back positive for methamphetamine. The claimant denies using methamphetamine. The employer terminated the claimant's employment December 21, 2017.

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, 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 proving disqualifying misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). Misconduct must be substantial in order to justify denial of unemployment insurance benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment insurance benefits. See *Lee v. Employment Appeal Board*, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See *Gimbel v. Employment Appeal Board*, 489 N.W.2d 36, 39 (Iowa Ct. App. 1990).

Iowa Code section 730.5 provides the authority under which a private sector employer doing business in Iowa may conduct drug or alcohol testing of employees. In *Eaton v. Employment Appeal Board*, 606 N.W.2d 553 (Iowa 1999), the Supreme Court of Iowa considered the statute and held "that an illegal drug test cannot provide the basis to render an employee ineligible for

unemployment compensation benefits.” Thereafter, In *Harrison v. Employment Appeal Board*, 659 N.W.2d 581 (Iowa 2003), the Iowa Supreme Court held that where an employer had not complied with the statutory requirement for the drug test, the test could not serve as a basis for disqualifying a claimant for benefits. In the present case, the employer requested the drug test based on the fact the claimant was on a medical leave of absence for more than 30 days. However, that is not a condition under which Iowa Code section 730.5 allows testing. Accordingly, the drug test was not authorized by law and cannot serve as the basis to disqualify the claimant from receiving unemployment insurance benefits. Therefore, benefits must be allowed.

DECISION:

The February 2, 2018, reference 01, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/scn