

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRYAN L HINTON
Claimant

APPEAL NO. 11A-UI-02458-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TEMPS NOW HEARTLAND LLC
Employer

OC: 01/02/10
Claimant: Respondent (1)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated February 22, 2011, reference 03, that concluded the claimant's separation was not under disqualifying conditions. A telephone hearing was held on March 28, 2011. The parties were properly notified about the hearing. The claimant failed to participate in the hearing. Laura Garonski participated in the hearing on behalf of the employer with a witness, Mary Burkett.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The employer is a staffing company that provides workers to client businesses on a temporary or indefinite basis.

The claimant worked on an assignment at MetoKote Corporation from May 18 to October 24, 2010. The position was to be a temp-to-hire job that would lead to permanent employment with MetoKote.

To obtain employment at MetoKote Corporation, the claimant was required to submit to a drug test on about October 24, 2010. The claimant reported to the clinic and provided a urine sample. The test came back inclusive but the employer is unaware of the particulars of why the test was inclusive.

When MetoKote learned about the inclusive result, it informed the employer that the claimant was to be removed due to his having a drug test that was not negative. The employer did not know the specific circumstances of the testing.

Even though the claimant was removed from the assignment at MetoKote, he was not discharged from his employment with the employer and the employer would have provided him with another assignment if it had a suitable assignment. The claimant has kept in regular contact with the employer about receiving another assignment.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. As an initial matter, the evidence does not establish the claimant was actually discharged from employment with the employer and the employer has treated him as an employee awaiting re-assignment.

Even if the claimant's removal from his assignment at MetoKote is treated as a discharge, it was not for work-connected misconduct as defined by the law. The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

The Iowa Supreme Court has ruled that an employer cannot establish disqualifying misconduct based on a drug test performed in violation of Iowa's drug testing laws. Harrison v. Employment Appeal Board, 659 N.W.2d 581 (Iowa 2003); Eaton v. Employment Appeal Board, 602 N.W.2d 553, 558 (Iowa 1999). As the court in Eaton stated, "It would be contrary to the spirit of chapter 730 to allow an employer to benefit from an unauthorized drug test by relying on it as a basis to disqualify an employee from unemployment compensation benefits." Eaton, 602 N.W.2d at 558.

The employer in this case had no information about the specifics of the testing administered to the claimant. There is no evidence as to whether the testing complies with Iowa law. As a result, no disqualifying misconduct has been proven in this case. The employer has to make sure that all the information regarding testing procedures, the testing procedures themselves, the employee assistant program requirement, and the notification requirements of Iowa Code § 730.5 have been met. It has failed to meet that burden in this case.

DECISION:

The unemployment insurance decision dated February 22, 2011, reference 03, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs