

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RICK G HOBBY
Claimant

APPEAL NO. 08A-UI-07825-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**NATIONAL SERVICE COMPANY OF
IOWA INC**
Employer

**OC: 07/06/08 R: 01
Claimant: Respondent (1)**

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

National Service Company of Iowa, Inc. (NSC) filed an appeal from a representative's decision dated August 22, 2008, reference 01, which held that no disqualification would be imposed regarding Rick Hobby's separation from employment. After due notice was issued, a hearing was held by telephone on September 16, 2008. Mr. Hobby participated personally. The employer participated by Andrea Malone, Unemployment Coordinator. Exhibits One through Five were admitted on the employer's behalf.

ISSUE:

At issue in this matter is whether Mr. Hobby was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Hobby was employed by NSC from June 6, 1989 until June 30, 2008. He was last employed full time as a site manager, a position he held for the last two to three months of his employment. He sustained an injury at work on June 18, 2008 and, pursuant to the employer's written policy, was required to undergo drug screening as a result.

The employer was notified on June 24 that Mr. Hobby's urine specimen had tested positive for amphetamines and marijuana. He was not contacted by a medical review officer (MRO) either before the testing or after the results were reported. The test results were faxed to the employer on June 24 but they were not discussed with Mr. Hobby until June 30, the day of discharge. He continued to work his normal job during the interim. A letter was sent him by the employer on July 1, 2008 confirming his discharge. The employer did not send him a letter by certified mail, return receipt requested, advising of the right to have a split of his original urine sample tested. The above matter was the sole reason for Mr. Hobby's discharge from NSC.

REASONING AND CONCLUSIONS OF LAW:

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Mr. Hobby was discharged because of positive drug test results. Drug test results may form the basis of a misconduct disqualification only if the testing complied with Iowa's drug testing laws. See Eaton v. Iowa Employment Appeal Board, 602 N.W.2d 553, 557 (Iowa 1999). The employer herein did not comply with the requirements of the law.

When there is a confirmed positive drug test, the employer is required to notify the employee that he has the right to have a split of his original specimen tested at his expense. The employer is required to provide the employee with this notice through a certified letter, return receipt requested. Iowa Code section 730.5(7)i. No such letter was sent to Mr. Hobby. Because this notice requirement was not satisfied, the drug test results may not be used as a basis for disqualifying him from receiving job insurance benefits. While the employer may have had good cause to discharge Mr. Hobby, conduct that might warrant a discharge from employment will not necessarily support a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa 1983). Benefits are allowed.

DECISION:

The representative's decision dated August 22, 2008, reference 01, is hereby affirmed. Mr. Hobby was discharged by NSC but misconduct has not been established. Benefits are allowed, provided he satisfies all other conditions of eligibility.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/css