

#### 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. Henschel was employed by Hy-Vee, Inc. from October 4, 2000 until August 31, 2005 as a full-time truck shop mechanic. He had a CDL and, as such, was subject to Department of Transportation regulations. The regulations provide for random drug testing of individuals holding a CDL. The employer utilizes a program that assigns numbers to each employee subject to testing. A number generator then selects numbers of the individuals to be tested. The employer matches that number to the assigned employee and conducts testing.

On August 28, 2005, Mr. Henschel was selected for random drug testing. The results were received on September 1 and indicated the presence of marijuana. Mr. Henschel was notified of the test results by the medical review officer and the results were confirmed in a conversation with the employer on September 2. Mr. Henschel acknowledged to the employer and during the hearing that he had used marijuana the night before the testing. He had not, prior to the testing, notified the employer that he had a drug or alcohol problem for which he might need treatment. He was told on September 2 that he had the right to have a split of his original specimen retested. Mr. Henschel declined the opportunity because he did not see that the results would change if a second test was done. It is the employer's policy not to offer the opportunity for treatment after positive test results are obtained. Mr. Henschel's positive drug test results were in violation of the employer's drug policy and, therefore, he was discharged on September 2, 2005. The above matter was the sole reason for the discharge.

#### REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Henschel was separated from employment for any disqualifying reason. 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. Henschel was discharged for violating the employer's drug policy. He knew that he was subject to random drug testing. He knew or should have known from the drug testing policy that positive test results could result in his discharge. The employer had the right to maintain a drug-free workplace. Mr. Henschel violated the standards he knew the employer expected of him. The employer was under no obligation to offer him drug treatment after he tested positive for illicit drugs.

After considering all of the evidence, the administrative law judge concludes that the employer has satisfied its burden of proving disqualifying misconduct. Accordingly, benefits are denied.

#### DECISION:

The representative's decision dated September 21, 2005, reference 01, is hereby affirmed. Mr. Henschel was discharged for misconduct in connection with his employment. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he satisfies all other conditions of eligibility.

cfc/pjs