

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

TIMOTHY A MCGINNIS
2436 – 4TH AVE
COUNCIL BLUFFS IA 51501

AMERISTAR CASINO
COUNCIL BLUFFS INC
c/o EMPLOYERS UNITY INC
PO BOX 749000
ARVADA CO 80006-9000

Appeal Number: 04A-UI-01217-HT
OC: 01/04/04 R: 01
Claimant: Respondent (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The employer, Ameristar, filed an appeal from a decision dated January 29, 2004, reference 01. The decision allowed benefits to the claimant, Timothy McGinnis. After due notice was issued, a hearing was held by telephone conference call on February 25, 2004. The claimant participated on his own behalf. The employer participated by Team Relations Manager Denver Meyer and Dr. Joseph McCafflin, and was represented by Employers Unity in the person of Luci Hengen.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Timothy McGinnis was employed by Ameristar from January 10, 2001 until December 17, 2003. He was a full-time surveillance technician.

On December 10, 2003, the claimant was selected for a random drug screening through a computer program administered by Alliant Health Care, which selected employees by social security number. He gave the drug sample and it was split. On December 17, 2003, Medical Review Officer Dr. Joseph McCaflin contacted the claimant and notified him he tested positive for methamphetamine, and asked whether he was on any medication which could have caused a false positive. The claimant indicated he was not.

Human Resources Director Andrea Edie told the claimant in person that he was discharged for violation of the zero tolerance drug policy. A letter was sent by regular mail notifying the claimant of the test result and his discharge. It was not sent certified mail and it did not contain any information notifying the claimant he could have the split sample retested at a laboratory of his choice.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes he is not.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The employer failed to fully comply with the requirements of Iowa Code Chapter 730.5 regarding random drug testing. While the employer did send him a letter by regular mail notifying him of the drug test results and that he was discharged, he was not notified in writing, either by regular or certified mail, of his right to have the split sample retested. Instead, he was discharged immediately. This violates the provisions Chapter 730.5, and disqualification may not be imposed.

DECISION:

The representative's decision of January 29, 2004, reference 01, is affirmed. Timothy McGinnis is qualified for benefits, provided he is otherwise eligible.

bgh/b