

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TRACY K JOHNSON
Claimant

APPEAL NO. 16A-UI-13018-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

FERRARA CANDY COMPANY
Employer

OC: 11/13/16
Claimant: Appellant (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Tracy Johnson (claimant) appealed a representative's December 1, 2016, decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits after her separation from employment with Ferrara Candy Company (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for December 28, 2016. The claimant participated personally. The employer participated by Tyler Walker, Human Resources Manager. The employer offered and Exhibit 1 was received into evidence.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on February 22, 2016, as a full-time overnight packer. The claimant signed for receipt of the employer's handbook on February 19, 2016. The handbook and the collective bargaining agreement contained a drug and alcohol policy. The employer had a policy that allows for rehabilitative treatment to an employee the first time the employee has a positive drug test so long as the employee has worked for the employer for at least twelve of the preceding eighteen months.

On October 7, 2016, the claimant injured her finger at work. The employer took her to the emergency room. While there the employer asked the laboratory to conduct a post-accident test. The test was required because the accident was OSHA (Occupational Safety and Health Administration) recordable. The split sample test took place on October 8, 2016. The claimant did not return to work.

On approximately October 19, 2016, the employer notified the claimant by phone that she tested positive for Methamphetamine. The laboratory sent the results to the claimant by certified mail. On October 20, 2016, the claimant met with the employer. The employer handed a copy of the test results to the claimant. The employer informed the claimant that she could

request a confirmatory test on the second sample but had to make the request within seven days of October 20, 2016. The claimant admitted she had used Methamphetamines three days prior to the test date due to a relapse. The claimant did not request further testing. On October 27, 2016, the employer terminated the claimant for testing positive for Methamphetamines while at work.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was discharged for misconduct.

Iowa Code § 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.

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 proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). Iowa Code Section 730.5(9) requires that a written drug screen policy be provided to every employee subject to testing. Iowa Code Section 730.5(7)(i)(1) mandates that an employer, upon a confirmed positive drug or alcohol test by a certified laboratory, notify the employee of the test results by certified mail and the right to obtain a confirmatory test before taking disciplinary action against an employee. Upon a positive drug screen, Iowa Code section 730.5(9)(g) requires that an employer offer

substance abuse evaluation and treatment to an employee the first time the employee has a positive drug test so long as the employee has worked for the employer for at least twelve of the preceding eighteen months.

The claimant was terminated for violating the employer's written drug policy that she received. The employer is entitled to perform drug testing after an injury and to discharge if the employee tests positive. After testing the claimant admitted use of methamphetamines three days before the accident. Her drug screen was positive and she did not request a test on both parts of the split sample. The employer did not discharge the claimant until seven days after she received the test results. The claimant is required to be drug free in the workplace. The violation of the known work rule constitutes misconduct.

DECISION:

The representative's December 1, 2016, decision (reference 01) is affirmed. The claimant is not eligible to receive unemployment insurance benefits because the claimant was discharged from work for misconduct. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount provided the claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/rvs