

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TAYLOR N OAKS
Claimant

APPEAL NO. 12A-UI-12626-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

BAGCRAFTPAPERCON II LLC
Employer

OC: 09/23/12
Claimant: Respondent (1)

Section 96.5-2-a – Discharge for Misconduct
Section 730.5 – Drug Testing

STATEMENT OF THE CASE:

The employer appealed a department representative's decision dated October 12, 2012, reference 01, that he was not discharged for misconduct on September 13, 2012. A hearing was held on November 19, 2012. The claimant participated. Tina Dederiksen, HR manager, participated for the employer.

ISSUE:

The issue is whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the witness testimony and having considered the evidence in the record, finds that: The claimant worked as a full-time operator from December 19, 2011 to September 13, 2012. The claimant received the Drug & Alcohol policy of the employer, which contains a provision he is subject to random drug testing. The employer uses an outside firm to select and test 15 employees each month.

Claimant was selected to submit a split sample urine test on September 13 and a preliminary result indicated an illegal substance. He was placed on administrative suspension. A medical review officer submitted a report to the employer on September 19 that claimant tested positive for THC (marijuana). The employer sent claimant by regular mail a letter he was discharged from employment for the positive drug test. The claimant was not sent a certified notice of the positive test nor was he advised of his right to request and obtain a confirmatory test of a secondary sample.

REASONING AND CONCLUSIONS OF LAW:

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.

The administrative law judge has reviewed the records and files herein and concludes that the employer failed to establish misconduct in the discharge of the claimant on 16, 2012, because it failed to follow the drug testing requisites of Iowa Code section 730.5.

The law requires that an employee be given written notice by certified mail of a positive drug test, and that he be advised of his right to request and obtain a confirmatory test of a secondary sample.

DECISION:

The decision of the representative dated October 12, 2012, reference 01, is affirmed. The claimant was not discharged for misconduct in connection with employment effective September 13, 2012. Benefits are allowed, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/kjw