

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ERNIE M HARRIS**  
Claimant

**APPEAL NO. 11A-UI-05735-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ACH FOOD CO INC**  
Employer

**OC: 03/27/11  
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

The claimant appealed an unemployment insurance decision dated April 20, 2011, reference 01, that concluded he was discharged for work-connected misconduct. A telephone hearing was held on June 21, 2011. The parties were properly notified about the hearing. The claimant participated in the hearing. No one participated in the hearing on behalf of the employer. Exhibit A was admitted into evidence at the hearing.

**ISSUE:**

Was the claimant discharged for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant worked full time for the employer as a material handler from May 5, 1992, to February 28, 2011. He was informed and understood that under the employer's work rules, employees were required to submit to a drug test under certain circumstances—including when an employee is involved in an accident in the workplace resulting in a reportable injury to a person or property damage of over \$1,000. The rules provide for termination for employees who test positive for illegal drugs.

On the morning of February 21, 2011, the claimant was moving bottles using a standup forklift. He collided with another employee who was coming through the same area with a pallet jack. Neither the claimant nor the other employee required any medical attention that day, and there was no property damage. The claimant and the employee continued working for another four hours before the human resources director required them to go to the Iowa Occupation Medicine clinic for drug testing.

The claimant provided a urine sample that was tested for drugs. A medical review officer informed the claimant on February 23 that he had a positive drug screen for marijuana. The medical review officer informed the claimant that he could have a split sample of the urine he had submitted tested by a certified lab at his own expense. The claimant requested that the split sample be tested, but the test results were again positive for marijuana. After the employer learned about the split sample result, the claimant was discharged on February 28, 2011.

## REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

The Iowa Supreme Court has ruled that an employer cannot establish disqualifying misconduct based on a drug test performed in violation of Iowa's drug testing laws. *Harrison v. Employment Appeal Board*, 659 N.W.2d 581 (Iowa 2003); *Eaton v. Employment Appeal Board*, 602 N.W.2d 553, 558 (Iowa 1999). As the court in *Eaton* stated, "It would be contrary to the spirit of chapter 730 to allow an employer to benefit from an unauthorized drug test by relying on it as a basis to disqualify an employee from unemployment compensation benefits." *Eaton*, 602 N.W.2d at 558.

Iowa Code § 730.5-9-a states that employer can take disciplinary action against an employee including termination of employment, upon receipt of "a confirmed positive test result for drugs or alcohol."

Under Iowa Code § 730.5-8, drug or alcohol testing is limited to the following reasons: (1) random testing, (2) drug or alcohol testing after completing of rehabilitation, (3) reasonable suspicion testing, (4) pre-employment, (5) federally required testing, and (6) to investigate accidents in the workplace resulting in an injury to a person reportable under chapter 88 or resulting in damage of over \$1,000. In addition, reasonable suspicion includes evidence that the person caused an accident at work resulting in an injury to a person reportable under chapter 88 or damage of over \$1,000. Iowa Code chapter 88 (Occupational Health and Safety Act) requires the reporting of work-related injuries, other than minor injuries that require only first aid treatment.

The drug test requested of the claimant on February 21, 2011, was in violation of Iowa Code § 730.5-8. The test was considered a post-accident drug test, but was not authorized by the statute because at the time the test was ordered, there was no property damage and no reportable injury under the standard of Iowa Code chapter 88. Because the employer was not justified under Iowa law to test the claimant at the point the test was ordered, the positive drug test does not disqualify the claimant from receiving unemployment insurance benefits.

**DECISION:**

The unemployment insurance decision dated April 20, 2011, reference 01, is reversed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

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Steven A. Wise  
Administrative Law Judge

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Decision Dated and Mailed

saw/pjs