

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RYAN T COCHRAN
Claimant

APPEAL NO. 13A-UI-13768-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MENARD INC
Employer

OC: 11/17/13
Claimant: Appellant (2)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Ryan Cochran, filed an appeal from a decision dated December 12, 2013, reference 01. The decision disqualified him from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on January 9, 2014. The claimant participated on his own behalf. The employer, Menard, participated by General Manager Cameron McDaniel, Assistant General Manager Kevin Harris, Human Resources Administrative Assistant Danyell Weesner and was represented by Paul Hammel. .

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Ryan Cochran was employed by Menard from October 31, 2012 until November 22, 2013 as a full-time receiver. During his employment he received the employer's drug testing policy which set out the circumstances under which a drug test could be required and the substances for which the test would be given.

On November 15, 2013, the claimant was in a work-related accident and sent to LabCorp to give a urine sample for analysis. On November 21, 2013, the employer was notified the test had come back positive for controlled substances. On November 22, 2013, Assistant Human Resources Manager Kevin Harris informed the claimant he was fired.

On December 6, 2013, the corporate human resources office sent the claimant a certified letter, return receipt requested, notifying him of his right to have the split sample retested at a lab of his choice for \$150.00. The letter further notified him he would be reimbursed the cost of the test if the results did not confirm the original test. The letter did not specifically state he would be rehired and the employer confirmed at the hearing no back pay would be awarded.

The claimant denied taking any controlled substances or over the counter medication which would have caused a false positive.

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.

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.

The employer discharged the claimant immediately upon receiving the drug analysis report from the laboratory. It was two weeks after he was fired that the employer notified Mr. Cochran of his right to have the split sample retests. Although the letter stated the cost of the second test would be reimbursed if it did not confirm the original test, there was no guarantee he would be rehired and no back pay would have been awarded. This is not in compliance with the provision of the Iowa Code 730.5 governing such tests.

The Iowa Supreme Court has held that "the employer's noncompliance with the notice requirements of the statute is sufficient to bar its reliance on [the employee]'s drug test results to prove misconduct." *Harrison v. Employment Appeal Bd.*, 659 N.W.2d 581 (Iowa 2003). The claimant's denial of drug use cannot be rebutted by the drug test results as the notice provisions were improper and the report cannot be admitted.

The employer has failed to meet its burden of proof to establish misconduct and disqualification may not be imposed.

DECISION:

The unemployment insurance decision dated December 12, 2013, reference 01, is reversed. Ryan Cochran is qualified for benefits, provided he is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/css