

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**LUZ I COLON**  
Claimant

**R C CASINO LLC**  
Employer

**APPEAL 17A-UI-08954-DG-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 08/06/17**  
**Claimant: Appellant (1)**

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Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Code § 730.5 – Private Sector Drug-free Workplaces

**STATEMENT OF THE CASE:**

Claimant filed an appeal from a decision of a representative dated August 25, 2017, (reference 01) that held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on September 20, 2017. Claimant participated personally and was represented by Kelsey A. W. Marquard, Attorney at Law. Employer participated by Sara Minard, Senior Human Resources Business Partner. Employer's Exhibits 1-7 and claimant's Exhibits A-B were admitted into evidence.

**ISSUE:**

Was the claimant discharged for disqualifying job-related misconduct?

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on July 31, 2017. Employer discharged claimant on August 14, 2017, because claimant violated employer's drug and alcohol free workplace policy.

Claimant did receive a copy of employer's drug and alcohol use policy. (Employer's Exhibit 6) Claimant submitted to a drug screen at a certified laboratory on July 27, 2017, because of periodic random testing. The result on August 3, 2017 was positive for cocaine. The results were provided to claimant by certified mail with return receipt by employer. On August 3, 2017, the claimant was offered but did not pursue a split sample test because she did not have the funds to pay for the test.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

Iowa Code section 96.5(2)a provides:

**Causes for disqualification.**

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. *Reigelsberger v. Emp't Appeal Bd.*, 500 N.W.2d 64, 66 (Iowa 1993); accord *Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661, 665 (Iowa 2000).

The employer has the burden of proving disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). Whether an employee violated an employer's policies is a different issue from whether the employee is disqualified for misconduct for purposes of unemployment insurance benefits. See *Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661, 665 (Iowa 2000) ("Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of benefits." (Quoting *Reigelsberger*, 500 N.W.2d at 66.)).

Testing under Iowa Code section 730.5(4) allows employers to test employees for drugs and/or alcohol but requires the employer "adhere to the requirements . . . concerning the conduct of such testing and the use and disposition of the results."

Iowa Code section 730.5(7)(i)(1) mandates that if a medical review officer (MRO) reports a positive test result to the employer, upon a confirmed positive drug or alcohol test by a certified laboratory, notify the employee of the test results by certified mail return receipt requested, and the right to obtain a confirmatory or split-sample test before taking disciplinary action against an employee.

Iowa Code section 730.5(9) requires that a written drug screen policy be provided to every employee subject to testing.

The Iowa Supreme Court has held that an employer may not “benefit from an unauthorized drug test by relying on it as a basis to disqualify an employee from unemployment compensation benefits.” *Eaton v. Iowa Emp’t Appeal Bd.*, 602 N.W.2d 553, 557, 558 (Iowa 1999). **[but see** The Court in *Sims v. HCI Holding Corp.*, 759 N.W.2d 333 (Iowa 2009), held that “[u]pon receipt of the positive test result evidencing Sims’s violation of the written drug policy, NCI was authorized to terminate Sims’s employment. Iowa Code § 730.5(10)(a)(3). He was given verbal but not written notice of the split-sample testing opportunity. As the confirmatory retest eventually requested by Sims confirmed the initial positive result, Sims’s employment was not adversely affected by an erroneous test result.” **regarding (lack of) substantial compliance because of verbal notification** of split-sample test, verbal declination and written notice several months later. ]

The employer has met the requirements of Iowa Code section 730.5. The claimant did receive a copy of employer’s drug and alcohol use policy, she was tested by random sample, the drug screen was positive for cocaine, claimant was notified by certified mail and offered a split screen sample, and she did not request a second test of the split sample. Employees are required to be drug free in the workplace. The violation of the known work rule constitutes misconduct as it presents a safety hazard to the employee and the general public and potential liability for the employer. Benefits are denied.

**DECISION:**

The August 25, 2017, (reference 01) unemployment insurance decision is affirmed. Claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

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Duane L. Golden  
Administrative Law Judge

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Decision Dated and Mailed

dlg/rvs