

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

DEANNA R PETERSON
1113 – 45TH AVE
EAST MOLINE IL 61244

ISLE OF CAPRI – BETTENDORF
1777 ISLE PARKWAY
BETTENDORF IA 52722

Appeal Number: 05O-UI-06772-S2T
OC: 03/20/05 R: 12
Claimant: Appellant (2)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Deanna Peterson (claimant) appealed a representative's April 7, 2005 decision (reference 03) that concluded she was not eligible to receive unemployment insurance benefits because she was discharged from work with Isle of Capri (employer) for violation of a known company rule. A hearing was held on July 18, 2005, following due notice pursuant to Remand Order of the Employment Appeal Board dated June 23, 2005. The claimant participated personally. The employer participated by Jason True, Human Resources Manager. The employer offered one exhibit which was marked for identification as Exhibit One. Exhibit One was received into evidence.

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 April 18, 1995, as a full-time table games dealer. The claimant received a copy of the employer's handbook and signed for its receipt on December 11, 2002. The handbook contains the employer's drug policy. The employer conducts random drug testing and has a no-tolerance policy with regard to drug use.

The claimant's clinical psychologist diagnosed the claimant with Attention Deficit Disorder. The clinical psychologist could not prescribe any medication and so she referred the claimant to a psychiatrist to consider prescribing Adderall (an amphetamine) or some other medication. The claimant's son had a prescription for Adderall and the claimant decided to take some of his medication prior to visiting her psychiatrist. After the claimant's separation from employment, the psychiatrist prescribed Adderall for the claimant.

On March 10, 2005, the employer asked the claimant to submit a sample for urinalysis. The employer did not inform the claimant for which drugs she would be tested. The claimant was not given the opportunity to notify the laboratory she was taking Adderall. The laboratory telephoned the claimant and notified her she tested positive for amphetamines. The claimant informed the laboratory she was taking Adderall. The laboratory told the claimant they still had to report the findings to the employer but did not offer to re-evaluate the testing using the information the claimant gave them. The employer received the results of the testing on March 16, 2005. The employer sent a certified letter to the claimant on March 16, 2005, notifying her of the results of the test and that she was terminated unless the testing on the secondary sample was negative for amphetamines.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant was discharged for misconduct. For the following reasons the administrative law judge concludes she was not.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 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). The claimant was terminated for violating the employer's drug policy. The claimant knew that any positive results on a random drug test would result in termination. The employer is entitled to take random drug testing and to discharge upon the receipt of a positive result. The claimant presented substantive evidence of a reason for a positive test.

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. Iowa Code section 730.5(7)c(2) requires the employer to inform the employee of the drugs to be tested. 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 Employment Appeal Board, 602 N.W.2d at 558.

The employer failed to give the claimant notice of the test results according to the strict and explicit statutory requirements. The results of the test were part of the termination letter. It also failed to inform the claimant of the drugs for which she would be tested. In addition, the claimant presented substantive evidence of a reason for a positive test. Benefits are allowed.

DECISION:

The representative's April 7, 2005 decision (reference 03) is reversed. The claimant was discharged. Misconduct has not been established. Benefits are allowed provided the claimant is otherwise eligible.

bas/kjf