

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RODNEY L EDWARDS
Claimant

APPEAL NO. 08A-UI-01837-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

COLLIS INC
Employer

**OC: 12/23/07 R: 04
Claimant: Appellant (1)**

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Rodney L. Edwards (claimant) appealed a representative's February 13, 2008 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits, and the account of Collis, Inc. (employer) would not be charged because the claimant had been discharged for disqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 10, 2008. The claimant participated in the hearing. Deb Bianchi, the human resource manager, and Michelle Anderson, the human resource coordinator, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on August 26, 2002. The claimant worked full-time. The claimant knew the employer had a drug policy and if he tested positive, he could be discharged.

On January 8, 2008, while the claimant drove a forklift, he ran into a dock door. The claimant not only damaged the dock door, but also parts located by the door. The estimated damage was over \$1,000.00. When an employee has an accident that involves \$1,000.00 in property damage, the employer's policy requires the employee to submit to drug test. After the accident, the employer asked the claimant to submit to a drug test on January 8.

On January 11, 2008, a medical review officer, Dr. Linn, contacted the claimant and informed him that the results of his drug test were positive for an illegal substance. Dr. Linn asked the claimant what, if any, prescribed medication he took or what, if any, over-the-counter drugs he had taken. The claimant recited the medications he had taken. Dr. Linn indicated these would not have any affect on the results of his drug test.

The employer learned on January 11 that the claimant had a positive drug test. Pursuant to the employer's drug policy, the employer discharged the claimant on January 11, 2008. On January 14, the employer sent the claimant a certified letter indicating he could have his split sample tested at a

laboratory of his choosing. Although the claimant would be required to pay \$180.00 for the test, if the results were negative the employer would reimburse the claimant and would reinstate him as an employee. The claimant did not request that his split sample be tested.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. It is well established that the employer has the burden to prove disqualifying misconduct. Iowa Code § 96.6 (2). The only reason the employer discharged the claimant was because of the positive January 8, 2008 drug test.

In Eaton v. Iowa Employment Appeal Board, 602 N.W.2d 553 (Iowa 1999), the Iowa Supreme Court determined that in order for a positive drug test to be misconduct sufficient to disqualify someone from unemployment insurance benefits, the drug test had to meet the requirements of the Iowa Drug Testing Law at Iowa Code § 730.5 and that such drug tests would be scrutinized carefully to see that the drug test complied with Iowa law. This decision was expanded by Andrew Harrison v. Employment Appeal Board and Victor Plastics, Inc., 659 N.W.2d 581 (Iowa 2003). In that decision, the Iowa Supreme Court determined that written notice of a positive drug test must be made by certified mail return receipt and the notice must inform the employee of the right to have a second confirmatory test done at a laboratory of the employee's choice and it must tell the employee what the cost of that test will be.

The evidence establishes that the claimant was informed of the positive drug test by a medical review officer. After the employer learned about the positive drug test, the employer sent the claimant a certified letter setting forth the requirements listed in Iowa Code § 730.5. The evidence establishes the employer followed the law as required under Iowa Code § 730.5.

Even though the claimant asserted there was no way his test should have been positive, without any evidence to substantiate his claim, the claimant's assertions are not supported by the facts. In summary, the administrative law judge concludes that the employer's drug test and the drug test conducted on the claimant's sample complies with Iowa Code § 730.5. This means the employer established the claimant was discharged for work-connected misconduct. Therefore, as of January 20, 2008, the claimant is not qualified to receive unemployment insurance benefits.

DECISION:

The representative's February 13, 2008 decision (reference 01) is affirmed. The employer discharged the claimant for reasons constituting work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of January 20, 2008. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw