

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

EDDIE MARYON
Claimant

TPI IOWA LLC
Employer

APPEAL 18A-UI-12408-DB-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 11/25/18
Claimant: Appellant (1)

Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the December 19, 2018 (reference 01) unemployment insurance decision that denied benefits based upon his discharge from employment for job related misconduct. The parties were properly notified of the hearing. A telephone hearing was held on January 15, 2019. The claimant, Eddie Maryon, participated personally. The employer, TPI Iowa LLC, participated through witness Danielle Williams. Employer's Exhibits 1 – 3 were admitted. The administrative law judge took official notice of the claimant's unemployment insurance benefits records.

ISSUE:

Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

Claimant was employed full-time as a production worker in the employer's factory. Claimant was employed from April 18, 2016 until December 7, 2018, when he was discharged from employment. Claimant's immediate supervisor was Isaac Hernandez.

The employer has a written drug policy. The claimant received a copy of this policy on April 18, 2016 and the policy has not changed since the claimant received a copy of it. Claimant did not read the policy. The drug policy states that employees can be subject to random drug testing. The policy further states that employees who refuse a drug test and who test positive may be subject to discharge from employment.

The employer has an awareness program regarding the dangers of drug use in the workplace by virtue of weekly safety meetings. It also has an employee assistance program. The employer requires supervisory personnel who are involved in drug testing to attend training each year. The employer uses a third-party provider to computer generate a random selection of employees for random drug testing each quarter. Each employee has an equal chance of selection.

The employer conducts drug testing by virtue of collection of urine at the employer's facility and transports the sample to a certified laboratory for testing if a non-negative screen is confirmed. Employees do have the option to discuss any prescriptions they are taking that may impact the test results.

Claimant was working on November 28, 2018 when he was told he had been chosen to take a random drug test. Claimant gave a urine sample to the third-party representative in charge of collection, which was then split into two samples. He was provided a private area to collect the urine sample. Once the preliminary non-negative result was obtained, claimant told the representative that he had eaten food that had marijuana in it approximately one and one-half months prior. He was told that the urine would be sent to a laboratory for further testing and that he was suspended pending the further test.

On December 6, 2018, the employer received the confirmed positive drug test for marijuana from Clinical Reference Laboratory. See Exhibit 1. This was a certified laboratory. See Exhibit 1.

Claimant was notified by telephone on December 7, 2018 that he was discharged. He was also notified by telephone that he would be receiving a letter in the mail that would instruct him on how to obtain a second testing of the split sample if he chose to do so and that his job could be re-instated if the second test confirmed a negative result.

A certified letter that included the test results was mailed to the claimant on December 7, 2018. See Exhibit 2. The letter informed claimant that he had the opportunity to have the second sample tested at an independent certified laboratory and that if those results were different than the positive drug test results no disciplinary action or sanction would be imposed. See Exhibit 2. The letter also listed the approximate cost of the second test. See Exhibit 2. Claimant did not pick up the letter at the post office. Claimant did not have a second test completed.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for job-related misconduct. Benefits are denied.

Iowa Code § 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.

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. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

Iowa Code § 730.5 specifically addresses private sector drug-free workplaces and what is required of employers regarding drug testing in the workplace. The employer has complied with the provisions of Iowa Code § 730.5 regarding claimant's random drug screen. Claimant tested positive for marijuana and had admitted to the employer that he had eaten food with marijuana in it prior to the test. Claimant failed to have the second urine sample tested and he was discharged for a violation of the employer's written drug policy. Accordingly, the employer has met its burden of proof in establishing that the claimant's conduct consisted of deliberate acts that constituted an intentional and substantial disregard of the employer's interests. These actions rise to the level of willful misconduct. As such, benefits are denied.

DECISION:

The December 19, 2018 (reference 01) unemployment insurance decision is affirmed. Claimant was discharged from employment for job-related misconduct. Unemployment insurance benefits are denied until claimant has worked in and earned wages for insured work equal to ten times his weekly benefit amount after his separation date, and provided he is otherwise eligible.

Dawn Boucher
Administrative Law Judge

Decision Dated and Mailed

db/rvs