

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

CHARLES L MAIDE
3000 'J' ST SW APT 507
CEDAR RAPIDS IA 52404-4572

TEAM STAFFING SOLUTIONS INC
116 HARRISON ST
MUSCATINE IA 52761

Appeal Number: 04A-UI-06008-HT
OC: 04/25/04 R: 03
Claimant: Respondent (1)

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

STATEMENT OF THE CASE:

The employer, Team Staffing Solutions, Inc. (Team Staffing), filed an appeal from a decision dated May 17, 2004, reference 02. The decision allowed benefits to the claimant, Charles Maide. After due notice was issued a hearing was held by telephone conference call on June 22, 2004. The claimant participated on his own behalf. The employer participated by Human Resources Manager Mick Black. Exhibit One was admitted into the record.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Charles Maide was employed by Team Staffing from May 7, 2003 until April 5, 2004. He was assigned to Quality Chef Foods and his last day of work there was on February 18, 2004.

On February 16, 2004, the claimant reported to Team Staffing that he had injured himself on the job when he was lifting some boxes. He was not referred for medical treatment until February 20, 2004, when he went to St. Luke's Hospital. On that date, he gave a urine sample for post-accident drug analysis. The test results came back positive for cocaine on February 25, 2004. The employer notified him on April 5, 2004, by certified letter that he was considered to have "self terminated" due to the positive drug test. The letter notified him he could have the split sample retested at his own expense at a laboratory of his choice and that he must notify Team Staffing either in person or by certified mail within seven days. Mr. Maide did not have the second confirmatory test done as it could not afford the \$125.00 fee.

The claimant acknowledged he had consumed cocaine the night before the urine sample was taken, but this was on February 19, 2004, and he had not worked for Quality Chef since February 18, 2004.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes he is 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 maintains the claimant “self terminated,” that is, quit, because of the positive drug test. However, this is specious as it is obvious he was discharged. The employer also delayed notifying the claimant of the positive results and that he was discharged for six weeks. Although this may have been because he was still on restrictions from his work-related injury, it is still beyond the time it can be considered a “current act.”

Although the claimant admitted the test results were correct because he had consumed the cocaine the night before, he was not working at the time. Because the sample was taken four days after the accident, and two days after his last day of work at Quality Chef, the employer has failed to establish the claimant was under the influence while at work. Disqualification may not be imposed.

DECISION:

The representative’s decision of May 17, 2004, reference 02, is affirmed. Charles Maide is qualified for benefits provided he is otherwise eligible.

bgh/kjf