

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

HAROLD W PIRKLE
Claimant

RBI ACQUISITION LLC
Employer

APPEAL 16A-UI-05464-DB-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/24/16
Claimant: Appellant (2)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the May 11, 2016 (reference 01) unemployment insurance decision that denied benefits based upon his discharge from employment for misconduct. The parties were properly notified of the hearing. A telephone hearing was held on May 27, 2016. The claimant, Harold W. Pirkle, participated personally. The employer, RBI Acquisition LLC, did not participate.

ISSUES:

Was the claimant discharged for disqualifying job-related misconduct?

Did claimant voluntarily quit the employment with good cause attributable to employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a warehouse worker from October 15, 2015 until March 17, 2016. Claimant was discharged from employment for having a positive result on a drug test.

A few days prior to March 17, 2016, the claimant reported to work as usual and was instructed right before the day ended that he needed to take a drug test. The drug test was conducted on site by a human resource representative.

Claimant believes that the employer does have a written drug and alcohol testing policy but does not remember receiving a copy of it. Claimant did not remember what the policy provided. Claimant submitted to the drug test and was informed that it was positive for one type of an illegal drug. Claimant was not asked whether he was taking any medications that might affect the results. Claimant was not informed of what drugs were to be tested. Claimant does not believe that the human resource representative was a Medical Review Officer. The sample was not sent to a facility to be tested but rather was tested by the human resource representative at the site of employment. The specimen collected was urine. No split sample was collected. Based upon the results of the test, claimant was immediately discharged approximately three

days later. Claimant was informed in writing by certified mail return receipt requested of the results of the drug test but was not provided an option to have a second confirmatory test conducted. The written letter he received approximately three days later told him he was immediately discharged from employment.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged for no disqualifying reason. Benefits are allowed.

As a preliminary matter, I find that the claimant did not quit. Claimant was discharged from employment.

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 and (4) 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).

(4) Report required. The claimant's statement and the employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate

the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

Further, the employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984).

Claimant did not receive a copy of employer's drug and alcohol use policy. No policy was submitted as evidence in this case and claimant could not recall what the policy specifically stated. Claimant submitted to what the employer stated was a random drug test; however, no other employees were tested. Claimant was not instructed of any basis as to why the employer had any reasonable suspicion to test him for drugs that day. Claimant was told he tested positive for an illegal substance. Claimant was not informed what type of drugs he was being tested for. Claimant was not allowed or asked to provide a list of medications he was taking that might affect the test. The results were mailed to the claimant by certified mail with return receipt but the claimant was discharged from employment in the letter. There was no testimony of who actually performed the test and whether that person had been trained to perform drug testing.

Iowa Code § 730.5 allows drug testing of an employee upon "reasonable suspicion" that an employee's faculties are impaired on the job or on an unannounced random basis. It also allows testing as condition of continued employment or hiring. Iowa Code § 730.5(4). There was no reasonable suspicion in this case since claimant was told this was a random drug test. However, claimant was the only employee tested. There was no evidence provided establishing that employer complied with the strict statutory requirements sufficient to allow random drug testing or that it had reasonable suspicion in testing claimant on that date.

Iowa Code § 730.5(9) requires that a written drug screen policy be provided to every employee subject to testing. Iowa Code § 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 return receipt requested, and the right to obtain a confirmatory or split-sample test *before* taking disciplinary action against an employee. (Emphasis added).

Upon a positive drug screen, Iowa Code § 730.5(9)(g) requires, under certain circumstances, that an employer offer substance abuse evaluation and treatment to an employee the first time the employee has a positive drug test. 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).

In an at-will employment environment an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy but if it fails to meet its burden of proof to establish job-related misconduct as the reason for the separation, it incurs potential liability for unemployment insurance benefits related to that separation. A violation is not

necessarily disqualifying misconduct even if the employer was fully within its rights to impose discipline up to or including discharge for the incident under its policy. While the employer certainly may have been within its rights to test and discharge the claimant, it failed to provide him a copy of the written policy; sufficient notice of his right to obtain a second confirmatory test prior to his discharge; collection of a split sample; and an opportunity for him to provide a list of medications that may affect the results of the test according to the strict and explicit statutory requirements. Thus, the employer cannot use the results of the drug test as a basis for disqualification from benefits.

The employer failed to meet its burden of proof of establishing disqualifying job misconduct. As such, benefits are allowed.

DECISION:

The May 11, 2016 (reference 01) unemployment insurance decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible. The benefits claimed and withheld shall be paid, provided he is otherwise eligible.

Dawn Boucher
Administrative Law Judge

Decision Dated and Mailed

db/can