

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARK E HUBER
Claimant

APPEAL NO. 11A-UI-12461-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

CENTRO INC
Employer

OC: 08/21/11
Claimant: Appellant (1)

Section 96.5-2-a – Discharge for Misconduct
Section 730.5 – Drug Testing

STATEMENT OF THE CASE:

The claimant appealed a department representative's decision dated September 14, 2011, reference 01, that the claimant was discharged for misconduct on July 7, 2011, and which denied benefits. A telephone hearing was held on October 17, 2011. The claimant participated. Tracy Lennon, HR assistant; Kevin Ishman, maintenance leader; and Rhonda Griffin, corporate HR leader, participated for the employer. Employer Exhibit One, pages 1 through 8, was received as evidence.

ISSUE:

The issue is whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the witness testimony and having considered the evidence in the record, finds that: The claimant worked as a full-time maintenance mechanic from March 2, 1987 to July 7, 2011. The claimant received the drug & alcohol policy of the employer, which contains a provision he is subject to random drug testing. The policy further provides he may be terminated for refusing to test.

The claimant was one of about 30 employees randomly selected for drug testing from the 300-employee workforce. The selection is determined by a third party from the workforce list. Claimant refused to submit to a random drug screen test on July 7, 2011. The corporate safety leader and supervisor told claimant his refusal to test could lead to employment termination. He confirmed his refusal, was terminated and was escorted from the building.

REASONING AND CONCLUSIONS OF LAW:

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.

The administrative law judge concludes the employer has established misconduct in the discharge of the claimant on July 7, 2011, because he refused to consent to drug testing in violation of policy.

The employer followed the law (Iowa Code section 730.5) by having a third party administrator make the random drug test selection from an employee list. Claimant signed for the policy that states a refusal subjects him to termination. He was given a second opportunity when taken to the office to sign the consent form and submit to testing. His repeated refusal to test is job-disqualifying misconduct.

DECISION:

The representative's decision dated September 14, 2011, reference 01, is affirmed. The claimant was discharged for misconduct in connection with employment on July 7, 2011. Benefits are denied until the claimant requalifies by working in and being paid wages for insured work equal to ten times his weekly benefit amount, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/kjw