

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CLAIMANT**  
Claimant

**APPEAL NO: 09A-UI-03624-E**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**EMPLOYER**  
Employer

**OC: 01/18/09  
Claimant: Appellant (1)**

Iowa Code Section 96.5-2-a - Discharge for Misconduct

**STATEMENT OF THE CASE:**

The claimant appealed an unemployment insurance decision dated February 24, 2009, reference 03, which denied benefits. After hearing notices were mailed to the parties' last-known addresses of record, an in-person hearing was held in Davenport, Iowa, on April 8, 2009. Both the claimant and the employer participated in the hearing. The reasoning and conclusions of law section of this decision explain the decision regarding the confidentiality issue involving federal drug testing information. By the undersigned signature on this decision, the Administrative Law Judge stipulates that the drug test information submitted in this case will only be made available to the parties to the proceeding.

**ISSUE:**

The issue is whether the employer discharged the claimant for work-related misconduct.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired by the employer as a full-time driver from October 2008 to January 19, 2009, when he was discharged for a positive drug test. He had a commercial driver's license which is regulated by the Department of Transportation (DOT). The claimant was informed and understood that under the employer's written drug-testing policy and federal department of transportation regulations, drivers are required to submit to drug testing under certain circumstances, including random drug tests. A positive drug test subjects employees to termination. The claimant was advised of the drug policy at the time of hire and the policy is posted on the back of the office door. The claimant was chosen for a random drug test September 16, 2008. He was tested at the Medical Association of Clinton. The claimant received a call from the Medical Review Officer September 19, 2008, advising him of his positive test result for methamphetamines. The employer received a call from the DOT September 19, 2008, reporting that the claimant tested positive for amphetamines and needed to stop driving immediately. The employer called the claimant and told him to report to the work site. The employer subsequently told the claimant he could not drive or work in the shop due to his positive drug test. He was given the option of enrolling in rehabilitation, and based on his successful participation, he would not be discharged. The employer told the claimant about a

class in Davenport and the claimant contacted someone about the class but opted not to enroll in rehabilitation and was discharged at that time.

### **REASONING AND CONCLUSIONS OF LAW:**

The first issue to be determined in this case is the effect of the confidentiality requirements of the federal law. The Omnibus Transportation Employee Testing Act of 1991 authorized the United States Department of Transportation (DOT) to prescribe regulations for testing of commercial motor vehicle operators. 49 USC § 31306. Congress required that the regulations provide for “the confidentiality of test results and medical information” of employees tested under the law. 49 USC § 31306(c)(7). Pursuant to this grant of rulemaking authority, the DOT established confidentiality provisions in 49 CFR 40.321 that prohibit the release of individual test results or medical information about an employee to third parties without the employee’s written consent. There is an exception, however, to that rule for administrative proceedings (e.g. unemployment compensation hearings) involving an employee who has tested positive under a DOT drug or alcohol test. 49 CFR 40.323(a)(1). The exception allows an employer to release the information to the decision maker in such a proceeding, provided the decision maker issues a binding stipulation that the information released will only be made available to the parties to the proceeding. 49 CFR 40.323(b). In the statement of the case, a stipulation in compliance with the regulation has been entered, which corrects the failure of the employer to obtain the stipulation before submitting the information to the appeals bureau.

This federal confidentiality provision must be followed despite conflicting provisions of the Iowa Open Records Act (Iowa Code chapter 22), the Iowa Administrative Procedure Act (APA) (Iowa Code chapter 17A), and Iowa Employment Security Law (Iowa Code chapter 96). Iowa Code section 22.2-1 provides: “Every person shall have the right to examine and copy a public record and to publish or otherwise disseminate a public record or the information contained in a public record.” The exhibits, decision, and audio recording in an unemployment insurance case would meet the definition of “public record” under Iowa Code section 22.1-3. Iowa Code section 17A.12-7 provides that contested case hearings “shall be open to the public.” Under Iowa Code section 96.6-3, unemployment insurance appeals hearings are to be conducted pursuant to the provisions of chapter 17A. The unemployment insurance rules provide that copies of all presiding officer decisions shall be kept on file for public inspection at the administrative office of the Department of Workforce Development. 871 IAC 26.17(3).

The federal confidentiality laws regarding drug testing must be followed because, under the Supremacy Clause, U.S. Const., Art. VI, cl. 2, state laws that “interfere with, or are contrary to the laws of congress, made in pursuance of the constitution” are invalid. Wisconsin Public Intervenor v. Mortier, 501 U.S. 597, 604 (1991). One way that federal law may pre-empt state law is when state and federal law actually conflict. Such a conflict arises when “compliance with both federal and state regulations is a physical impossibility or when a state law “stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.” Id. at 605. Although the general principle of confidentiality is set forth in a federal statute (49 USC § 31306(c)(7)), the specific implementing requirements are spelled out in the federal regulation (49 CFR 40.321). The United States Supreme Court has further ruled that “[f]ederal regulations have no less preemptive effect than federal statutes.” Capital Cities Cable, Inc v. Crisp, 467 U.S. 691, 699 (1984) (ruling that federal regulation of cable television pre-empted Oklahoma law restricting liquor advertising on cable television, and Oklahoma law conflicted with specific federal regulations and was an obstacle to Congress’ objectives).

In this case, the Iowa Open Records law, APA, and Employment Security law actually conflict with the federal statute 49 USC § 31306(c)(7) and the implementing regulations 49 CFR 40.321

to the extent that they would require the release of individual test results or medical information about an employee to third parties beyond the claimant, employer, and the decision maker in this case. It would defeat the purpose of the federal law of providing confidentiality to permit the information regarding the test results to be disclosed to the general public. Since the decision to discharge the claimant was based on his testing positive on a DOT drug test, it would be impossible to issue a public decision identifying the claimant without disclosing the drug test results. Therefore, the public decision in this case will be issued without identifying information. A decision with identifying information will be issued to the parties; but that decision, the exhibits, and the audio record (all of which contain confidential and identifying information) shall be sealed and not publicly disclosed.

The next issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance 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 employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The claimant was discharged for violation of the employer's drug and alcohol policy due to his positive drug test for methamphetamines on September 16, 2008. Iowa Code section 730.5 sets forth the rules by which a private company may screen its employees for use of illegal drugs. However, when a drug test administered to a claimant pursuant to Federal law, the Iowa drug testing policy at Iowa Code section 730.5 does

not apply. See Iowa Code section 730.5(2) and 49 C.F.R. 382.109 for Federal rules preempting state rules if compliance with the state requirement is an obstacle to the accomplishment and execution of the requirements of the Federal rules. Iowa Code section 730.5 has stricter requirements for a drug test than the Federal rules at 49 C.F.R. Subtitle A, Part 40. In the case herein, the claimant was a driver with a commercial driver's license, which is a position subject to Federal Department of Transportation drug testing guidelines. The employer complied with the federal drug testing regulations and its own policies. A preponderance of the evidence establishes the claimant violated the employer's drug policy. The claimant's violation of the employer's drug policy shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. The employer discharged the claimant for reasons constituting work-connected misconduct. Therefore, benefits are denied.

**DECISION:**

The unemployment insurance decision dated February 24, 2009, reference 03, is affirmed. The claimant is not eligible to receive unemployment insurance benefits because he was discharged from work for misconduct. Benefits are denied until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/pjs