

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PATRICK M TOMLINSON
Claimant

APPEAL NO: 14A-UI-10680-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MASTER – HALCO INC
Employer

OC: 09/14/14
Claimant: Respondent (1)

Iowa Code § 96.5(2)a – Discharge

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's October 3, 2014 determination (reference 01) that held the claimant qualified to receive benefits and the employer's account subject to charge because the claimant had been discharged for nondisqualifying reasons. The claimant did not respond to the hearing notice or participate at the November 3 hearing. Beth Crocker represented the employer. Bruce Heiter, the branch manager, Darrell McLeish and Itzel Chang, a human resource generalist, appeared on the employer's behalf. During the hearing, Employer Exhibits One through Five were offered and admitted as evidence. Based on the evidence, the employer's arguments, and the law, the administrative law judge concludes the claimant is qualified to receive benefits.

ISSUE:

Did the employer discharge the claimant for reasons constituting work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in October 1994. He worked full time in the yard loading trucks. The claimant received a copy of the employer's updated drug and alcohol policy in March 2014. (Employer Exhibit Five.) Part of the policy informs employees that some employees are subject to random drug tests and if they test positive for an illegal drug they will be discharged. The employer has zero tolerance for drugs and alcohol at work. (Employer Exhibit Four.)

On September 9, 2014, the employer asked the claimant to take a random drug test. The claimant provided a saliva sample that was immediately sent to a clinic for testing. (Employer Exhibit One.) On September 16, 2014, the employer received information the claimant had a positive test for one of the tested substances. (Employer Exhibit Two.) The lab's medical review officer contacts the employee and goes over the test results. (Employer Exhibit Three.) The employer does not send an employee a certified letter informing the employee a second test can be completed on the split sample. The employer relies on the clinic to provide an employee with information about a second test. The employer does not know if the claimant received a letter informing him he could have a second test performed.

On September 16, 2014, the employer discharged the claimant for failing the drug test. The claimant established a claim for benefits during the week of September 14, 2014. As of November 3, the claimant had not filed any weekly claims.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code § 96.5(2)a.

The law defines misconduct as:

1. A deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment.
2. A deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees. Or
3. An intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer.

Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion do not amount to work-connected misconduct. 871 IAC 24.32(1)(a).

The Iowa Supreme Court has ruled that an employer cannot establish disqualifying misconduct based on a drug test performed in violation of Iowa's drug testing laws. *Harrison v. Employment Appeal Board*, 659 N.W.2d 581 (Iowa 2003); *Eaton v. Employment Appeal Board*, 602 N.W.2d 553, 558 (Iowa 1999). As the court in *Eaton* stated, "It would be contrary to the spirit of chapter 730 to allow an employer to benefit from an unauthorized drug test by relying on it as a basis to disqualify an employee from unemployment compensation benefits." *Eaton*, 602 N.W.2d at 558.

The facts establish the employer violated Iowa Code § 730.5(7)i by failing to notify the claimant in writing by certified mail, return receipt requested, of the results of the test and his right to have the split sample tested at his request along with the actual cost of that test. These requirements were deemed mandatory in *Harrison v. Employment Appeal Board*. In the *Eaton* case, the Iowa Supreme Court focused on whether the drug test complied with the law.

The employer discharged the claimant because of the positive test result, but because the employer violated part of Iowa's drug testing laws, the employer did not establish that the claimant committed work-connected misconduct. As of September 14, 2014, the claimant is qualified to receive benefits.

DECISION:

The representative's October 3, 2014 determination (reference 01) is affirmed. The employer discharged the claimant for business reasons, but the employer did not establish that the claimant committed work-connected misconduct. As of September 14, 2014, the claimant is qualified to receive benefits, provided he meets all other eligibility requirements. The employer's account is subject to charge.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs