

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

TAYLA D HERMAN
Claimant

COUNTRY MEADOWS PLACE LLC
Employer

APPEAL 19A-UI-07260-AW-T
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 08/04/19
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Claimant/appellant filed an appeal from the September 3, 2019 (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified of the hearing. A telephone hearing was held on October 7, 2019, at 2:00 p.m. Claimant participated. Employer participated through Cassidy Schmidt, Clinical Quality Manager, and Tony Buhr, Community Manager. Claimant's Exhibits A – C were admitted. Employer's Exhibits 1 – 4 were admitted.

ISSUE:

Whether claimant's separation was due to disqualifying job-related misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a memory care coordinator from July 17, 2017 until her employment with Country Meadows Place, LLC ended on August 2, 2019. (Claimant Testimony) Claimant worked Monday through Friday from 10:00 a.m. until 6:00 p.m. (Claimant Testimony) Claimant's direct supervisors were Lee Hogg, Healthcare Coordinator, and Tony Buhr, Community Manager. (Schmidt Testimony)

Employer has a drug policy outlined in its Team Member Handbook. (Exhibit 4) The policy is meant to discourage and prevent employees from illegally using drugs. (Exhibit 4, p. 6) Team members may be subject to drug testing periodically, without advance notices and without individualized suspicion. (Exhibit 4, p. 5). The policy allows unannounced testing for the entire employee population at a particular work site. (Exhibit 4, p. 6) The policy states that the first confirmed positive drug test will result in termination of employment. (Exhibit 4, p. 3) Claimant received a copy of the handbook upon hire. (Schmidt Testimony) Employer has a drug awareness program and regularly trains supervisory employees on the testing procedures. (Schmidt Testimony)

On July 25, 2019 employer performed an unannounced drug test on all employees at claimant's work site because the work site had missing narcotics and allegations that the employees

conducting the drug testing were not following the employer's policy. (Schmidt Testimony) Claimant submitted a urine sample for drug testing. (Schmidt Testimony) The immediate, on-site result was positive for barbiturates. (Schmidt Testimony) The sample was split and sent to a laboratory for confirmatory testing. (Schmidt Testimony) The results of the confirmatory test was also positive for barbiturates. (Schmidt Testimony; Exhibit 2) Claimant had no prescription for barbiturates. (Claimant Testimony) On August 1, 2019, employer sent a letter to claimant informing her of the positive test results, her right to request and obtain a confirmatory test and the cost associated with the test. (Exhibit 1) The letter was mailed via certified mail, return receipt requested. (Burh Testimony) Claimant did not request a confirmatory test. (Claimant Testimony) On August 1, 2019, employer terminated claimant's employment for violation of the drug policy. (Schmidt Testimony)

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged for disqualifying job-related misconduct. Benefits are denied.

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 disqualification shall continue 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) provides:

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 of misconduct has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Reigelsberger v. Emp't Appeal Bd.*, 500 N.W.2d 64, 66 (Iowa 1993); *accord Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661, 665 (Iowa 2000). 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).

Iowa law is very specific about the requirements of a private sector drug-free workplace. See Iowa Code § 730.5. Drug testing may be conducted pursuant to requirements established by an employer's written policy. *Id.* at 730.5(9)(a)(1). The policy must be provided to all employees subject to testing. *Id.* Employers may conduct unannounced drug testing of the entire employee population at a particular work site. *Id.* at 730.5(8)(a)(1). Drug testing must include confirmation

of any initial positive test results. *Id.* at 730.5(7)(g). Employers are required to notify an employee of a confirmed positive test result in writing by certified mail, return receipt requested. *Id.* at 730.5(7)(j)(1). The notice must include the results of the test, the employee's right to request and obtain a confirmatory test and the fee payable by the employee for such testing. *Id.*

The employer's drug policy must set forth uniform requirements for what disciplinary actions an employer may take against an employee upon receipt of a confirmed positive test result for drugs. *Id.* at 730.5(9)(b). Upon receipt of a confirmed positive test for drugs which violates the employer's written policy, an employer may use the test result as a basis for disciplinary or rehabilitative action pursuant to its policy and Iowa law, which may include termination of employment. *Id.* at 730.5(7)(g), (10)(a).

In this case, employer's substance abuse policy meets the statutory requirements. Employer followed its policy and complied with Iowa law. Claimant was properly tested for drugs with all other employees at her work site. The result of the drug test was positive for barbiturates. Claimant was informed of the initial drug test result and allowed the opportunity to provide a prescription. The specimen was sent to a laboratory for confirmatory testing. The result of that test was also positive for barbiturates. Claimant was notified of the positive test result by letter sent via certified mail, return receipt requested. The letter also notified claimant of her right to request and obtain a confirmatory test and the fee for that confirmatory test. Employer's policy and Iowa law provide for the termination of claimant's employment based upon a confirmed positive test result. Claimant was discharged for disqualifying job-related misconduct. Benefits are denied.

DECISION:

The September 3, 2019 (reference 01) unemployment insurance decision is affirmed. Claimant was discharged for disqualifying job-related misconduct. Benefits are denied until claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Adrienne C. Williamson
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Decision Dated and Mailed

acw/rvs