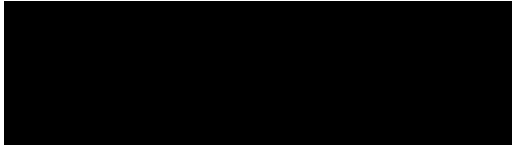


**IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION
UNEMPLOYMENT INSURANCE APPEALS BUREAU**



APPEAL 24A-UI-03136-PT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

████████████████████
Claimant

████████████████████
Employer

APPEAL 24A-UI-03136-PT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 02/11/24
Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

The claimant filed an appeal from a decision of a representative dated March 11, 2024, (reference 01) that held the claimant ineligible for unemployment insurance benefits after a separation from employment. After due notice, a telephone hearing was held on April 11, 2024. The claimant participated. The employer participated through a Human Resources Specialist. The administrative law judge took official notice of the administrative record.

ISSUE:

Was the claimant discharged for disqualifying, job-related misconduct?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: The claimant worked for the employer as a full-time truck driver from March 16, 2022, to January 29, 2024, when he was discharged. The claimant operated a tractor-trailer unit. The work required a commercial driver's license (CDL) and subjected the claimant to United States Department of Transportation (DOT) Federal Motor Carrier Safety Administration drug testing requirements.

The employer has a drug and alcohol policy. The policy is outlined in the employee handbook and notifies employees of the substances tested for as well as uniform standards for actions taken in cases of a confirmed positive test. The policy warns employees that a confirmed positive test or a refusal to submit to testing would result in discipline up to and including termination of employment.

Prior to working for the employer, the claimant had previously received a positive drug screen result. For this reason, pursuant to the drug and alcohol policy, the claimant was required to complete a substance abuse program, wherein he was subject to randomized drug testing for a two year period. The claimant was aware that a confirmed positive test result during the two year probationary period would result in termination of his employment.

On January 10, 2024, the employer notified the claimant that he was required to report for a drug screen. The claimant reported to the lab and provided a urine sample that same day. The sample was split into two in front of the claimant to allow for a test of the split sample and was then sent to a certified laboratory for testing. The claimant tested positive for cocaine. The test results were reviewed by a qualified medical review officer (MRO), who verified the positive test result. On or around January 17, 2024, the MRO sent the claimant the test results. With the results, the MRO notified the claimant of his right to have a second confirmatory test performed and of the cost associated with a second confirmatory test.

The claimant requested to have the split sample retested. The split sample was sent to a different certified laboratory of the claimant's choosing. On January 29, 2024, an MRO notified the parties that the split sample was positive for cocaine. That same day, the employer mailed the claimant a certified letter with the positive test results and informed the claimant that he was no longer qualified to perform his position due to the confirmed positive test.

REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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:

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 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 the 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). The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661 (Iowa 2000).

The employer employs individuals who are subject to drug and alcohol testing pursuant to DOT regulations. The claimant was an employee subject to drug and alcohol testing under the regulations. The employer is required to comply with all applicable requirements and procedures of 49 CFR Parts 40 and 382.

The Federal Motor Carrier Safety Act (FMCSA) generally provides:

49 CFR 382.411 requires that the employer notify the employee of the test results and, if positive, which controlled substance was present.

Section 382.501 requires the employer or designated employer representative (DER) to remove the driver from performing safety-sensitive functions.

Section 382.601 requires the employer to develop a policy about the misuse of alcohol and controlled substances and provide proof of employee receipt.

49 CFR 40.15 allows for the use of a service agent, such as a medical review officer (MRO) to act on behalf of the employer to meet DOT testing requirements.

Section 40.131 requires the employer or MRO to speak directly to the employee about the test result.

Section 40.137 requires the MRO to offer the employee a chance to provide a legitimate medical explanation for the positive test result.

Section 40.153 requires the MRO to notify the employee of the right to a split specimen test at their cost and how to obtain that test. See also, 49 CFR 40.171.

Section 40.163 requires the MRO to report the initial and split test results, if any, to the employer and employee. See also, 49 CFR 40.187.

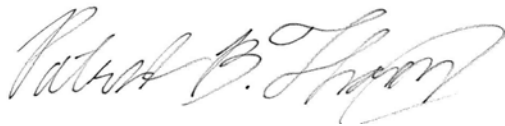
The employer has followed the requirements of the DOT regulations for follow-up testing and retesting. The claimant was aware of the employer's drug and alcohol use policy and had received a copy and training on the policy when hired. The claimant was tested at a certified testing facility for follow-up testing per the policy and applicable regulations. The claimant's test result was positive for cocaine. The MRO informed the claimant of his right to have the split sample retested, which the claimant requested, and the split sample also tested positive for cocaine.

As the claimant had previously tested positive for a controlled substance, the claimant was aware that a confirmed positive drug test during the two-year probationary period would result in

termination of his employment. The claimant's violation of a known work rule and DOT regulations constitutes misconduct as it presents a safety hazard to the general public and potential liability for the employer. The employer has established that the claimant was discharged for disqualifying, job-related misconduct. Benefits are denied.

DECISION:

The March 11, 2024 (reference 01) unemployment insurance decision is affirmed. The claimant was discharged for substantial job-related misconduct. Unemployment insurance benefits funded by the State of Iowa are denied until the claimant has worked in and been paid wages for insured work equal to ten times their weekly benefit amount after the January 31, 2024, separation date, and provided the claimant is otherwise eligible.



Patrick B. Thomas
Administrative Law Judge

April 30, 2024
Decision Dated and Mailed

pbt/scn

APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board
6200 Park Ave Suite 100
Des Moines, Iowa 50321
Fax: (515)281-7191
Online: eab.iowa.gov**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf> or by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board
6200 Park Ave Suite 100
Des Moines, Iowa 50321
Fax: (515)281-7191
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que se encuentra en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf> o comunicándose con el Tribunal de Distrito Secretario del tribunal <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.