

**IOWA DEPARTMENT OF INSPECTIONS AND APPEALS
ADMINISTRATIVE HEARINGS DIVISION, UI APPEALS BUREAU**

ROBERT N BENNETT
Claimant

APPEAL 23A-UI-05442-AW-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

DEERE AND COMPANY
Employer

OC: 04/23/23
Claimant: Respondent (2)

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

STATEMENT OF THE CASE:

Employer filed an appeal from the May 15, 2023 (reference 01) unemployment insurance decision that allowed benefits. The parties were properly notified of the hearing. A telephone hearing was held on June 14, 2023. Claimant did not participate. Employer participated through Wage Workforce Coordinator Sadie Rosenboom. No exhibits were admitted. The administrative law judge took official notice of the administrative record.

ISSUES:

Whether claimant's separation was a discharge for disqualifying job-related misconduct.
Whether claimant was overpaid benefits.
Whether claimant should repay those benefits and/or whether employer should be charged based upon its participation in the fact-finding interview.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

Claimant was employed as a full-time Production Worker from May 2, 2011 until his employment with Deere and Company ended on December 19, 2022.

Employer has a written Drug and Alcohol Free Workplace policy. Claimant acknowledged receipt of the policy. The policy states that employer can subject an employee to drug testing if it has reasonable suspicion that the employee is under the influence of illegal drugs. The policy further states that the testing will be done by a third-party company at the workplace, it will be completed via urinalysis and the five drugs for which the sample will be tested. The policy provides uniform standards for actions that are taken in case of a confirmed positive test. Employer has a drug and alcohol abuse awareness program.

On December 7, 2022, employer's medical staff smelled the odor of marijuana on claimant. Based upon the odor, employer had reasonable suspicion that claimant was under the influence of an illegal drug and asked claimant to complete a drug test. The third-party company took a urine sample from claimant at the workplace. Employer suspended claimant pending the test results.

The split sample tested positive for marijuana. Employer informed claimant of the result via certified mail. Claimant has not requested a test of the split sample. Employer discharged claimant on December 19, 2023 for violation of its Drug and Alcohol Free Workplace policy. Employer is not aware of any other employees who have violated the policy and were not terminated.

Claimant has received no unemployment insurance benefits since filing his initial claim effective April 23, 2023.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes:

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 Code section 96.5(2)d 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:

d. For the purposes of this subsection, "*misconduct*" means a deliberate act or omission by an employee that constitutes a material breach of the duties and obligations arising out of the employee's contract of employment. Misconduct is 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 even 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. Misconduct by an individual includes but is not limited to all of the following:

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 drug testing employees in a private sector workplace. See Iowa Code § 730.5. Drug testing must 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 every employee subject to testing and available for review by prospective employees. *Id.* Employers are permitted to test employees and prospective employees for drugs as a condition

of continued employment or hiring. *Id.* at 730.5(4). The conduct of the testing and the use and disposition of the test result must comply with the requirements of Iowa law. *Id.*

Drug testing must include confirmation of any initial positive test results. *Id.* at 730.5(7)(g). Employers are required to notify a prospective employee of a confirmed positive test result in writing. *Id.* at 730.5(7)(j)(2).

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).

Employer's drug testing policy meets the requirements of Iowa law and claimant's test complied with the policy. See Iowa Code § 730.5. Claimant's test was positive for marijuana. Claimant was discharged for disqualifying job-related misconduct. Benefits are denied.

Because claimant has not received unemployment insurance benefits, the issues of overpayment, repayment and charges are moot.

DECISION:

The May 15, 2023 (reference 01) unemployment insurance decision is REVERSED. 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 claimant's weekly benefit amount, provided claimant is otherwise eligible. The issues of overpayment, repayment and charges are moot.



Adrienne C. Williamson
Administrative Law Judge

June 26, 2023
Decision Dated and Mailed

rvs

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
4th Floor – Lucas Building
Des Moines, Iowa 50319
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
4th Floor – Lucas Building
Des Moines, Iowa 50319
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 adquiera 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.