

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MATT N PHEND**  
Claimant

**APPEAL NO. 13A-UI-09090-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**DEE ZEE INC**  
Employer

**OC: 06/16/13  
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge  
871 IAC 26.8(5) – Decision on the Record

**STATEMENT OF THE CASE:**

An appeal was filed from an unemployment insurance decision dated July 3, 2013, reference 01, that denied benefits. A telephone hearing was scheduled for September 11, 2013. The claimant, the appellant herein, did not participate in the hearing. The employer responded to the notice of hearing and submitted documentation. The employer's telephone number was not correctly noted. This decision is based upon information in the administrative file.

**ISSUE:**

At issue in this matter is whether the representative's decision should be affirmed finding that the claimant was discharged for misconduct.

**FINDINGS OF FACT:**

Matt Phend was employed by Dee Zee, Inc. on May 21, 2013. The claimant was observed attempting to load a truck in an unusual manner. Based upon observation by a supervisor, the claimant was required to undergo drug testing per written company policy, under the company's reasonable suspicion portion of its drug testing policy. The claimant was tested during working hours. A specimen was collected by a certified laboratory. The test was confirmed positive for a controlled substance by Quest Laboratory. Testing and control were maintained of the sample. A confirmatory test was performed on the positive sample. The claimant was contacted by a medical review officer and the claimant was informed of his positive test results by certified mail, return receipt requested and offered the opportunity to have the split sample that was maintained re-tested by another qualified laboratory within seven days.

**REASONING AND CONCLUSIONS OF LAW:**

Iowa Code § 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.

871 IAC 26.8(3), (4) and (5) provide:

Withdrawals and postponements.

(3) If, due to emergency or other good cause, a party, having received due notice, is unable to attend a hearing or request postponement within the prescribed time, the presiding officer may, if no decision has been issued, reopen the record and, with notice to all parties, schedule another hearing. If a decision has been issued, the decision may be vacated upon the presiding officer's own motion or at the request of a party within 15 days after the mailing date of the decision and in the absence of an appeal to the employment appeal board of the department of inspections and appeals. If a decision is vacated, notice shall be given to all parties of a new hearing to be held and decided by another presiding officer. Once a decision has become final as provided by statute, the presiding officer has no jurisdiction to reopen the record or vacate the decision.

(4) A request to reopen a record or vacate a decision may be heard ex parte by the presiding officer. The granting or denial of such a request may be used as a grounds for appeal to the employment appeal board of the department of inspections and appeals upon the issuance of the presiding officer's final decision in the case.

(5) If good cause for postponement or reopening has not been shown, the presiding officer shall make a decision based upon whatever evidence is properly in the record.

The administrative law judge has carefully reviewed the documentation in the file that concludes that the unemployment decision previously entered in this case is correct and should be

affirmed. The claimant was aware of the company's written drug testing policy. The testing was for cause and done in compliance with Iowa Code § 730.5 of the Iowa Drug Testing Statute. The claimant was properly notified of the positive test results and given the opportunity to have the split sample retested. The evidence establishes that the claimant was discharged under disqualifying conditions.

Pursuant to the rule, the appellant must make a written request to the administrative law judge that the hearing be reopened within 15 days after the mailing date of this decision. The written request should be mailed to the administrative law judge at the address listed at the beginning of this decision and must explain the emergency or other good cause that prevented the appellant from participating in the hearing at its scheduled time.

**DECISION:**

The unemployment insurance decision dated July 3, 2013, reference 01, is affirmed. The claimant is disqualified until he had worked in and been paid wages for insured work equal to ten times his weekly benefit amount and is otherwise eligible. This decision will become final unless a written request establishing good cause to reopen the record is made to the administrative law judge within 15 days of the date of this decision.

---

Terence P. Nice  
Administrative Law Judge

---

Decision Dated and Mailed

css/css