

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHAEL K ROE
Claimant

APPEAL NO. 09A-UI-07125-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

FAMILY DOLLAR SERVICES INC
Employer

OC: 08-31-08
Claimant: Appellant (1)

Iowa Code § 96.5(2)a – Discharge/Misconduct
Iowa Code § 730.5 – Private sector drug-free workplaces

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the April 29, 2009, reference 03, decision that denied benefits. After due notice was issued, a hearing was held on June 3, 2009. The claimant did participate. The employer did participate through Leah Douglas, Human Resources Manager and Bertram Lee, M.D. medical review officer.

ISSUE:

Was the claimant discharged for work-related misconduct?

FINDINGS OF FACT:

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was employed as a fork lift operator full time beginning September 29, 2008 through March 6, 2009 when he was discharged.

On February 26 the claimant was selected for a random drug test pursuant to the employer's drug testing policy, a written copy of which had been given to him when he began his employment. The claimant reported to the nurse's office and provided a urine sample. On March 2 the claimant was called by Bertram Lee, M.D. who interviewed him about his drug test. Dr. Lee asked the claimant if he had a prescription for either Marinol or Dronabinol to which the claimant indicated he did not. Dr. Lee asked the claimant if he had smoked marijuana. The claimant told Dr. Lee that he had smoked marijuana approximately one month prior. Dr. Lee told the claimant that his drug test was positive for marijuana. By certified letter dated March 3, 2009 the claimant was notified of his positive drug test and of his opportunity to have the split sample tested at his own cost. He signed for and received the certified letter on March 3, 2009 and opted not to have the split sample tested. He was discharged on March 6, 2009 for his positive drug test.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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.

The employer has the burden of proving disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982).

Iowa Code § 730.5(9) requires that a written drug screen policy be provided to every employee subject to testing. Iowa Code § 730.5(7)(i)(1) mandates that an employer, upon a confirmed positive drug or alcohol test by a certified laboratory, notify the employee of the test results by certified mail and the right to obtain a confirmatory test before taking disciplinary action against an employee.

The claimant's drug screen was positive and claimant did not request a test on both parts of the split sample. The claimant's denial of smoking marijuana after his admission to Dr. Lee is not credible in light of the positive drug test. The employer has complied with provisions of Iowa Code § 730.5. The claimant is required to be drug free in the workplace. The violation of the known work rule constitutes misconduct. Benefits are denied.

DECISION:

The April 29, 2009, reference 03, decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/pjs