

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ERIC D SHATTO**

Claimant

**APPEAL NO. 08A-UI-00509-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WINDSOR WINDOW COMPANY**

Employer

**OC: 12/23/07 R: 02  
Claimant: Respondent (2)**

Section 96.5(2)a – Discharge

**STATEMENT OF THE CASE:**

The employer, Windsor Window, filed an appeal from a decision dated January 11, 2008, reference 01. The decision allowed benefits to the claimant, Eric Shatto. After due notice was issued a hearing was held by telephone conference call on January 30, 2008. The claimant participated on his own behalf. The employer participated by Assistant Manager of Human Resources Liz Mallaney.

**ISSUE:**

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

**FINDINGS OF FACT:**

Eric Shatto was employed by Windsor Windows from July 30 until December 13, 2007, as a full-time fabricator. He received a copy of the employer's drug policy which advised him he was subject to random drug testing, and the drugs for which he would be tested.

On December 10, 2007, the corporate office notified Assistant Manager of Human Resources Liz Mallaney of the employees who had been selected for random testing that month. The employer's witness was not certain how the names were selected, whether it was done within the corporation or by an independent third party. Mr. Shatto's name was selected and he gave a urine sample on December 10, 2007. It was taken at Company Medicine PC and the sample was split, then sent to Drug Test West for analysis.

The claimant was not contacted by a medical review officer and the first time he was notified of the results was on December 13, 2007, when Ms. Mallaney and Manager Jeff Gahman met with him to say he had been tested positive for marijuana. The claimant was not sent a certified letter with the test results, nor was he advised in writing he had the right to have the split sample retested at a laboratory of his choice, along with information about the cost of such test. Instead he was given a letter which told him to contact Drug Test West if he wanted to discuss the results. The letter further stated if the test was positive due to illegal drugs in his system he need not call because it would not relieve him of disciplinary action.

The claimant did not protest the results of the test because he admitted he had been smoking marijuana prior to the test and knew the positive results were accurate and a secondary test would show the same positive results.

Eric Shatto filed a claim for unemployment benefits with an effective date of December 23, 2007. The records of Iowa Workforce Development indicate no benefits have been paid as of the date of the hearing.

### **REASONING AND CONCLUSIONS OF LAW:**

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 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 failed to comply with most of the drug testing provisions of Iowa Code section 730.5. It could not establish how the random selection was done, did not notify the claimant by certified mail nor inform him of his right to have the split sample tested at a laboratory of his choice. This makes the results of the drug test inadmissible.

However, the claimant did admit, under oath, to having smoked marijuana and that the results of the test were correct. He knew marijuana was a controlled substance and having it in his system was a violation of the employer's drug policy. The employer has the obligation to provide a safe work environment for all employees and the claimant's conduct interfered with its ability to do so. The claimant's admission of having illegal substances in his system while at

work is sufficient to establish he was discharged for conduct not in the best interests of the employer and is disqualified.

**DECISION:**

The representative's decision of January 11, 2008, reference 01, is reversed. Eric Shatto is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount, provided he is otherwise eligible.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

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