

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JAMES E BROUGHTON
Claimant

APPEAL NO. 13A-UI-11125-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

IPSCO TUBULARS INC
Employer

**OC: 08/25/13
Claimant: Appellant (1)**

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated September 18, 2013, reference 01, that concluded he was discharged for work-connected misconduct. A telephone hearing was held on October 23, 2013. This hearing was reopened because the claimant was called into work on the day of the hearing and had no opportunity to request a postponement. A rescheduled hearing was held on November 1, 2013. The parties were properly notified about the hearing. The claimant participated in the hearing. KathyBorkgren participated in the hearing on behalf of the employer. Exhibits One through Seven were admitted into evidence at the hearing.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked full time for the employer as a machine operator from September 27, 2010, to July 25, 2013. He was informed and understood that under the employer's work rules, employees were required to submit to a drug test under certain circumstances, including when an employee is randomly selected for drug testing, and were subject to termination if they tested positive for drugs. Supervisors with the employer have received annual training on recognizing the signs of drug or alcohol use. The employer has an employee assistance program for its employees and employees are notified about the program.

A couple of days before July 25, 2013, the claimant drank beer at a party spiked with cocaine.

Pursuant to the policy, the claimant was required to submit to a drug test on July 25, 2013. A urine sample was properly taken from the claimant and properly analyzed using an initial drug screen test and subsequent confirmatory test by a certified laboratory. The analysis disclosed the presence of cocaine in the claimant's system in violation of the employer's policy. The claimant was discharged by the employer on July 30, 2013, after it received the results of the drug test.

The employer sent the claimant a letter by certified mail, return receipt requested on July 30, 2013, informing him about the result of the test and his right to have a split sample tested. The letter informed him about the cost of the test, which was \$150, which was the same amount as the employer paid for the test and would have been repaid to the claimant if the test was negative. The claimant received the letter but did not request to have the split sample tested because he did not have the money.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

The Iowa Supreme Court has ruled that an employer cannot establish disqualifying misconduct based on a drug test performed in violation of Iowa's drug testing laws. *Harrison v. Employment Appeal Board*, 659 N.W.2d 581 (Iowa 2003); *Eaton v. Employment Appeal Board*, 602 N.W.2d 553, 558 (Iowa 1999). As the court in *Eaton* stated, "It would be contrary to the spirit of chapter 730 to allow an employer to benefit from an unauthorized drug test by relying on it as a basis to disqualify an employee from unemployment compensation benefits." *Eaton*, 602 N.W.2d at 558.

The evidence establishes all the requirements for valid drug testing under Iowa Code § 730.5 were followed.

The claimant's violation of the employer's drug and alcohol policy was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. Work-connected misconduct as defined by the unemployment insurance law has been established in this case.

DECISION:

The unemployment insurance decision dated September 18, 2013, reference 01, is affirmed. The claimant is disqualified from receiving unemployment insurance benefits until he has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs