

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

JUSTIN M SARAZIN
PO BOX 97
LE CLAIRE WI 52753-0097

GREYSTONE MANUFACTURING LLC
2601 SHORELINE DR
BETTENDORF IA 52722

Appeal Number: 06A-UI-05067-DWT
OC: 04/09/06 R: 04
Claimant: Respondent (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

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.

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.

YOU MAY REPRESENT yourself in this appeal or you may 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. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Greystone Manufacturing LLC (employer) appealed a representative's May 5, 2006 decision (reference 01) that concluded Justin M. Sarazin (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 30, 2006. The claimant participated in the hearing. Jim Strieck, the human resource manager, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on May 23, 2005. The claimant worked as a full-time assembler/operator. The employer has a zero tolerance policy for drugs.

Although the employer may have a written drug policy, the claimant has never seen the written policy. The claimant does not remember the employer talking about its drug policy during any safety or training meetings.

On March 8, the claimant operated a forklift. After the claimant parked the forklift and had gotten off of it, the brake of the forklift slipped and the forklift moved and ran into something. The claimant was not injured. The next day, the employer asked the claimant to take a drug test. The claimant declined to take a drug test because he had no knowledge the employer required employees to take a post-accident test. Strieck suspended the claimant until the plant manager returned to work and had an opportunity to talk to the claimant.

On March 13, the plant manager talked to the claimant and asked him to take a drug test for insurance purposes. The claimant agreed to submit to a drug test. The initial test was positive. The employer then sent the sample to a second laboratory for a confirmatory test. The employer received information that this test was also positive.

On March 17, the employer told the claimant his drug test was positive. The claimant requested that another test be done on the sample he gave and the employer indicated the split sample had already been tested. The claimant then asked that he be given an opportunity to provide another sample that could be tested. The employer denied this request.

Although the employer believed a medical doctor at the laboratory contacted the claimant about the results of the test, the claimant did not receive such a phone call. The claimant was not even told which drug had tested positive. The employer did not send the claimant a certified letter informing him about his right to have a split sample tested.

After the employer learned the claimant's drug test was positive, the employer discharged the claimant on March 17, 2006, for violating the employer's drug policy.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. It is well established the employer has the burden to prove disqualifying misconduct. Iowa Code § 96.6 (2). The only reason the employer discharged the claimant was because of a positive drug test on March 13, 2006.

In Eaton v. Iowa Employment Appeal Board, 602 N.W.2d 553 (Iowa 1999), the Iowa Supreme Court determined that in order for a positive drug test to be misconduct sufficient to disqualify someone from unemployment insurance benefits, the drug test had to meet the requirements of the Iowa Drug Testing Law at Iowa Code § 730.5 and that such drug tests would be scrutinized carefully to see that the drug test complied with Iowa law. This decision was expanded by Andrew Harrison v. Employment Appeal Board and Victor Plastics, Inc., 659 N.W.2d 581 (Iowa 2003). In that decision, the Iowa Supreme Court determined that written notice of a positive drug test must be made by certified mail return receipt and the notice must inform the employee

of the right to have a second confirmatory test done at a laboratory of the employee's choice and it must tell the employee what the cost of that test will be. The Court further required that an employee be informed that the employee had seven days to request a second test or confirmatory test. This notice was not sent to the claimant in this case. Iowa's drug testing law also requires a medical review officer to inform a person about the positive drug test and ask about any medication the person is taking.

The evidence establishes the employer informed the claimant about the positive drug test but did not indicate which drug had tested positive. While the claimant requested a confirmatory test at a lab he chose, the employer denied this request because a split sample had not been preserved. The evidence establishes the employer did not follow the law required under Iowa Code § 730.5. Since the employer relied on a drug test that did not comply with Iowa's drug testing law, the claimant cannot be disqualified from receiving benefits for having a positive drug test.

DECISION:

The representative's May 5, 2006 decision (reference 01) is affirmed. The employer may have had business reasons for discharging the claimant, but the employer did not establish that the claimant committed work-connected misconduct. As of April 9, 2006, the claimant is qualified to receive unemployment insurance benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

dlw/kjw