

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JAMELL L RUSH
Claimant

SAFELITE SOLUTIONS LLC
Employer

APPEAL 19A-UI-06475-CL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 07/07/19
Claimant: Appellant (1)**

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22(2) – Able & Available - Benefits Eligibility Conditions

STATEMENT OF THE CASE:

On August 15, 2019, the claimant filed an appeal from the August 13, 2019, (reference 01) unemployment insurance decision that denied benefits based on a separation from employment. The parties were properly notified about the hearing. A telephone hearing was held on September 9, 2019. Claimant participated. Employer participated through operations manager Annette Kohl.

ISSUES:

Was the claimant discharged for disqualifying job-related misconduct?
Is the claimant able to and available for work?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on September 17, 2018. Claimant last worked as a part-time customer service representative. Claimant was separated from employment on April 30, 2019, when he was terminated.

Employer has a drug and alcohol policy that prohibits employees from being under the influence of drugs and alcohol in the workplace. The policy provides for testing in cases of reasonable suspicion. The policy states that refusal to take a drug and alcohol test will result in termination. Claimant was given a copy of the policy when he began employment.

On April 29, 2019, claimant got into a car accident on his way home from work and injured his pinky. Claimant had also recently lost a loved one and his mother was in the hospital.

On April 30, 2019, claimant came to work even though he felt very stressed out. Claimant was working slower than usual. Claimant's supervisor, Diane Hollenbeck, believed claimant had bloodshot and glassy eyes and was moving more slowly than usual. Hollenbeck believed

claimant was incoherent on his phone calls. Hollenbeck reported her observations to operations manager Annette Kohl.

Kohl and Hollenbeck met with claimant and observed him. Kohl asked claimant to take a test for drugs and alcohol. Claimant declined, stating he would not be able to pass the test. Employer terminated claimant's employment.

Employer had never previously disciplined claimant for similar behavior.

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 section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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.

Iowa Admin. Code r. 871-24.32(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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proving disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). Whether an employee violated an employer's policies is a different issue from whether the employee is disqualified for misconduct for purposes of unemployment insurance benefits. See *Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661, 665 (Iowa 2000) ("Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of benefits." (Quoting *Reigelsberger*, 500 N.W.2d at 66.)).

Testing under Iowa Code section 730.5(4) allows employers to test employees for drugs and/or alcohol but requires the employer "adhere to the requirements . . . concerning the conduct of such testing and the use and disposition of the results." Iowa Code section 730.5(1)*i* allows drug testing of an employee upon "reasonable suspicion" that an employee's faculties are impaired on the job or on an unannounced random basis. It also allows testing as condition of continued employment or hiring. Iowa Code § 730.5(4).

The employer has met the requirements of Iowa Code section 730.5. The claimant did receive a copy of employer's drug and alcohol use policy, employer did provide evidence of reasonable suspicion, and claimant declined to take the drug and alcohol test in violation of employer's policy.

Employees are required to be drug free in the workplace. The violation of the known work rule constitutes misconduct as it presents a safety hazard to the employee and the general public and potential liability for the employer.

Employer established claimant was terminated for misconduct.

Because claimant is disqualified from receiving benefits, the issue regarding his availability for work is moot and will not be discussed further in this decision.

DECISION:

The August 13, 2019, (reference 01) unemployment insurance decision is affirmed. 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.

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Decision Dated and Mailed

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