

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOHN B WRIGHT
Claimant

APPEAL NO. 11A-UI-11508-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ALLSTEEL INC
Employer

OC: 08/07/11
Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Claimant filed a timely appeal from a representative's decision dated August 29, 2011, reference 01, which denied unemployment insurance benefits. After due notice, a telephone hearing was held on September 26, 2011. Claimant participated. The employer participated by Ms. Denice Norman, Hearing Representative and witness, Ms. Cherie McClusky, Division Manager. Employer's Exhibits One through Seven were received into evidence.

ISSUE:

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

FINDINGS OF FACT:

Having considered all of the evidence in the record, the administrative law judge finds: John Wright was employed by Allsteel, Inc. from July 23, 2007 until August 2, 2011 when he was discharged from employment. Mr. Wright worked as a full-time assembler and was paid by the hour.

The claimant was discharged when he violated the terms of a last chance rehabilitation agreement that he had entered into with Allsteel, Inc. after previously failing a drug screen.

Under the terms of the agreement between the parties, Mr. Wright was subject to being retested randomly during a period following his completion of rehabilitation. The claimant knew the terms of the agreement and agreed to them. Mr. Wright successfully passed two random tests that had been given on March 4 and April 4, 2011 but did not successfully pass a drug screen that was given to him on August 2, 2011.

Based upon the claimant's failure to comply with the provisions of the last chance agreement in effect between the parties, Mr. Wright was discharged from employment. The claimant did not dispute the positive test results for marijuana or dispute that he had violated the terms of the agreement in effect between Allsteel, Inc. and Mr. Wright.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that the claimant was discharged for violating the terms of the last chance agreement in effect between the parties. It does.

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.

In this case Mr. Wright had initially tested positive for a controlled substance in violation of the company's written drug testing policies. Because the employer had a rehabilitation program, the claimant was not discharged for his violation of company policy at that time, but instead was allowed to enter rehabilitation and allowed to continue employment contingent upon adhering to the last chance agreement that he had entered into with the company. The claimant was aware that he was subject to random testing during a period of time after completing rehabilitation and he was aware that a positive test result during that time period would result in his automatic termination from employment.

When the claimant did not successfully complete rehabilitation by testing positive, he was discharged for violating the agreement and did not dispute his violation of the terms of the agreement or his positive test results.

Section 730.58(g)(3) of the Iowa Code § that provides the authority under which a private sector employer doing business in Iowa may conduct drug or alcohol testing provides an employer is

not precluded from taking any adverse employment action against an employee during rehabilitation based upon the employee's failure to comply with any requirements of the rehabilitation.

For the reasons stated herein, the administrative law judge concludes that the claimant was discharged for misconduct in connection with his work. Unemployment insurance benefits are withheld.

DECISION:

The representative's decision dated August 29, 2011, reference 01, is affirmed. Claimant is disqualified. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, and meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs