

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**MICHELLE A STEPHENSON**  
Claimant

**VAN DIEST SUPPLY CO**  
Employer

**APPEAL 15A-UI-10029-SC-T**  
**ADMINISTRATIVE LAW JUDGE**  
**DECISION**

**OC: 08/02/15**  
**Claimant: Appellant (1)**

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Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Code § 96.5(1) – Voluntary Quitting

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the August 25, 2015, (reference 01) unemployment insurance decision that denied benefits based upon the determination she was discharged for violating a known company rule. The parties were properly notified about the hearing. A telephone hearing was held on September 21, 2015. Claimant Michelle Stephenson participated on her own behalf. Employer Van Diest Supply Co. participated through Personnel Manager Carolyn Cross and was represented by Attorney Espanola Cartmill. Employer's Exhibits 1 through 6 were received.

**ISSUE:**

Was the claimant discharged for disqualifying job-related misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full-time as a Production Operator beginning June 26, 2012, and was separated from employment on May 28, 2015, when she was discharged due to a violation of the employer's drug free workplace policy. The claimant takes a prescription amphetamine. She is prescribed to take 70 milligrams of Vyvanse per day. She was selected for a random drug test in December 2014. Her test results showed positive for amphetamines and her levels were slightly high even with the prescription, but the Medical Review Officer (MRO) determined it was at an acceptable level.

The claimant was selected for another random drug test on May 13, 2015 per the employer's policy. The claimant had received a copy of the drug policy the year prior. The claimant was asked to provide a list of her prescription medications which she did to the best of her ability. The list included Vyvanse. A split sample urine test was collected. The test conducted that day came back positive and a sample was sent to a licensed laboratory for confirmation. The test came back positive for amphetamines. The claimant was again asked about her Vyvanse prescription which had not changed since her prior drug test. However, the claimant's drug test came back positive for amphetamines at a level ten times higher than the December 2014 test.

The MRO determined based on the level of amphetamine in her system she was overusing her medication and she could no longer safely perform her job. The claimant was discharged from her employment.

On May 29, 2015, the employer sent the claimant a letter certified mail, return receipt requested, explaining the results of the test and her right to have a second test performance at a laboratory she designates within seven days of the letter. If the test results were negative, the employer would ignore the first test. The claimant spoke with Personnel Manager Carolyn Cross and asked about obtaining a second test. However, the claimant did not know what laboratory to use. Cross assisted her by looking up the names of laboratories that could perform the test and offered to waive the \$75.00 testing fee. However, the claimant never designated a laboratory for her sample to be sent and tested. Therefore, a second test was not conducted.

### **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. Benefits are denied.

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.

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 met the requirements of Iowa Code § 730.5 because the claimant received a copy of employer's drug and alcohol use policy, her sample was tested at a certified testing facility as a result of her selection for a random drug screen, the drug screen was positive for amphetamines outside of the amount expected due to her identified medications, the claimant was notified by certified mail and offered a split screen sample, and she did not request a second test of the split sample as she never designated a laboratory. The claimant's argument she is on numerous medications is not persuasive as she was unable to identify any additional amphetamine medications she was taking during the hearing. Employees are required to be drug free in the workplace, which includes using their prescription medication within the parameters prescribed by their physicians. The violation of the known work rule constitutes misconduct. Benefits are denied.

**DECISION:**

The August 25, 2015, (reference 01) unemployment insurance decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

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Stephanie R. Callahan  
Administrative Law Judge

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Decision Dated and Mailed

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