

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LOLA F SHIVERS
Claimant

APPEAL NO. 11A-UI-11503-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

XPAC
Employer

**OC: 01/02/11
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 25, 2011, reference 05, which denied unemployment insurance benefits. After due notice, a telephone hearing was held on September 26, 2011. Claimant participated. Employer participated by Ms. Bridget Steele, Human Resource Generalist; Mr. Rodney Jackson, General Supervisor for Shift; and Ms. Abby Fobert, Human Resource Generalist.

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: Lola Shivers was employed by XPAC from February 28, 2011 until July 28, 2011 when she was discharged for refusal to take a drug screen. Ms. Shivers was employed as a full-time packer and was paid by the hour.

On July 28, 2011, Ms. Shivers reported a work injury that had been caused by another employee. Because the injury had been reported as work-related, the claimant was informed that a drug screen would be required per company policy. When the claimant declined to undergo the drug screen, the employer further explained to Ms. Shivers that under the company's written policies she would be subject to discharge for refusal to undergo the drug screen because of a work injury. When the claimant continued to refuse the drug screen, she was discharged from employment.

At the time of hire Ms. Shivers signed a written acknowledgement for receipt of the company's handbook which contains its drug testing policies including the policy that employees be drug tested if they are involved in a work injury.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits. 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.

The employer has the burden of proof in this matter. Iowa Code § 730.5 provides the authority under which a private sector employer doing business in Iowa may conduct drug or alcohol testing of employees. Section 730.5(8)f provides the authority for private sector employers to require drug testing in conjunction with investigating accidents in the workplace when a report of an injury would be required under workers' compensation law requirements.

Section 730.5(9)b provides that employees may be discharged from employment if the company's written policy informs them that refusal can subject the employee to termination from employment.

In the case at hand, the evidence establishes that Ms. Shivers was informed of the company's written drug policies at the time of hire and that she was reminded of the requirement that she undergo a drug screen when involved in a work-related injury. The claimant had reported a work-related injury that the employer reasonably considered to be a workers' compensation type injury that needed to be reported; therefore, the claimant was subject to a mandatory drug screen and discharged when she refused. Claimant was provided reasonable and adequate

information that her refusal would lead to termination and was discharged when she continued to refuse to undergo the drug screen authorized by law and company policy. Unemployment insurance benefits are withheld.

DECISION:

The representative's decision dated August 25, 2011, reference 05, 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 her weekly benefit amount, and meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs