

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**KELLY G STOCKDALE**  
Claimant

**BARILLA AMERICA INC**  
Employer

**APPEAL 16A-UI-08898-LJ-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 07/17/16**  
**Claimant: Appellant (2)**

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Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Code § 730.5 – Private Sector Drug-free Workplaces

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the August 11, 2016, (reference 01) unemployment insurance decision that denied benefits based upon a determination that claimant was discharged from employment for violation of a known company rule. The parties were properly notified of the hearing. A telephone hearing was held on September 1, 2016. The claimant, Kelly G. Stockdale, participated. The employer, Barilla America, Inc., participated through Jasmina Salkic Kudic, HR generalist.

**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: Claimant was employed full time, most recently as a gluten-free technician, from June 15, 2015, until July 22, 2016, when he was discharged.

Salkic Kudic testified that claimant received a copy of employer's drug and alcohol use policy as well as its reasonable suspicion drug testing policy. No documentary evidence of a written drug screen policy was offered. Claimant submitted to a drug screen at a certified laboratory on July 6, 2016, because of reasonable suspicion. Salkic Kudic testified that three independent sources notified the employer that claimant was using drugs, selling drugs to coworkers, or under the influence of drugs while at work. Claimant underwent a urinalysis drug test at Story County Medical Center in Nevada, Iowa. Claimant was told he was being tested because of a reasonable suspicion, but he was not given any information about the basis for the employer's reasonable suspicion. Claimant was not asked whether he was on any prescription drugs that might affect the outcome of the test. Claimant testified he is currently taking a prescription amphetamine, and he was taking it during his employment. Salkic Kudic testified that claimant's drug screen tested positive for methamphetamine. The results were provided to claimant by certified mail at some point following the test. Claimant was offered but did not pursue a split

sample test to confirm the results. Claimant was not provided any referral information for an employee assistance program or a substance abuse evaluation.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason. Benefits are allowed.

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 the burden of proving disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). Iowa Code § 730.5 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. "Reasonable suspicion" means evidence that the employee is using or has used drugs in violation of the employer's written policy drawn from "specific objective and articulable facts and reasonable inferences" based on (among other items) observable phenomena, abnormal conduct, evidence that the employee has sold or possessed drugs on the work premises, or a report of drug use from a reliable and credible

source. Iowa Code § 730.5(j). It also allows testing as condition of continued employment or hiring. Iowa Code § 730.5(4). Iowa Code § 730.5(9) requires that a written drug screen policy be provided to every employee subject to testing. Iowa Code § 730.5(7)(i)(1) mandates that an employer, upon a confirmed positive drug or alcohol test by a certified laboratory, notify the employee of the test results by certified mail return receipt requested, and the right to obtain a confirmatory or split-sample test before taking disciplinary action against an employee. Iowa Code § 730.5(10)(a)(1) provides that the employer may require that the employee enroll in an employer-provided or approved rehabilitation, treatment, or counseling program, which may include additional drug or alcohol testing, participation in and successful completion of which may be a condition of continued employment, and the costs of which may or may not be covered by the employer's health plan or policies. The Iowa Supreme Court has held that an employer may not "benefit from an unauthorized drug test by relying on it as a basis to disqualify an employee from unemployment compensation benefits." *Eaton v. Iowa Emp't Appeal Bd.*, 602 N.W.2d 553, 557, 558 (Iowa 1999).

In an at-will employment environment an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, it incurs potential liability for unemployment insurance benefits related to that separation. A violation is not necessarily disqualifying misconduct even if the employer was fully within its rights to impose discipline up to or including discharge for the incident under its policy. Here, there is no indication that claimant was given an opportunity to disclose his prescription medication that may have affected the outcome of his drug test. Claimant's unrefuted testimony indicates the party who administered the test did not ask him about any prescription drug usage. There is no indication that the certified letter that claimant received from the employer provided any information about submitting evidence of valid prescription drug usage to challenge the initial positive result. Additionally, the employer did not submit a copy of the written drug testing policy or claimant's acknowledgment of the same and it did not notify him about resources for substance abuse evaluations and treatment. The employer may not use the results of the claimant's drug screen as a basis for disqualification from benefits. The employer has not met its burden of proving claimant was discharged from employment for disqualifying, job-related misconduct. Benefits are allowed, provided claimant is otherwise eligible.

**DECISION:**

The August 11, 2016, (reference 01) unemployment insurance decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible.

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Elizabeth A. Johnson  
Administrative Law Judge

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Decision Dated and Mailed

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