drug-free workplace policy, the claimant underwent a urinalysis drug test. On July 14 the claimant attended a company-wide meeting where the employer's revised drug and alcohol policy was discussed and passed out to all employees including the claimant. Two major changes were made to the policy on July 14. First, random testing would no longer be conducted on employees, and secondly, any employee who tested positive would be discharged for a first offense. Both the new and old policy contained the following explicit language: "The presence in any detectable amount of any illegal drug in an employee while performing Company business or while in a Company facility is prohibited." (Employer's Exhibit One, page 3). The requirement that employees be drug-free while at work was not a new requirement in the 2005 policy, it had existed under the 2004 policy. The policy is clear that employees are required to be drug-free while at work. The claimant had received the 2004 policy.

The employer was notified that the claimant tested positive for marijuana use on July 22. When the medical provider was unable to reach the claimant, they notified the employer who called the claimant into the office from the plant on July 27, 2005 and notified him of his positive drug test. The results were not a surprise to the claimant as he had indicated to Mr. Larsen when he was taken for a drug test that he would be "dirty" as he had smoked marijuana at a birthday party the previous weekend. At the hearing, the claimant admitted that he had smoked marijuana prior to the drug test. The claimant alleges that he smoked marijuana during the weekend of July 9, 10, prior to the new drug policy being passed out to employees on July 14. The claimant admitted at hearing that he knew that smoking marijuana is prohibited conduct under Iowa law.

On July 27 the employer verbally explained to the claimant his rights to have the split sample tested at his own cost. Additionally, the employer sent the claimant a certified letter notifying him of his positive test results and of his ability to have the split sample tested at his own cost. The claimant never picked up the certified letter.

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:
>
> 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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

Both the old and the new drug policy specifically and explicitly required the claimant to be drug-free while at work. The claimant's argument that he smoked pot prior to the change in the policy and should therefore be exempted from discharge is not persuasive. The claimant had the obligation to be drug-free no matter what discipline the employer elected to apply to his actions. The claimant was properly notified of his rights pursuant to Iowa Code section 730.5. The claimant chose not to pick up the certified letter sent by the employer. The employer is just required to send the letter, not to make sure the claimant picks it up. The employer has established compliance with Iowa Code section 730.5. The claimant's drug screen was positive for marijuana. The claimant is required to be drug-free in his job. His violation of the known work rule constitutes misconduct. The claimant's admission of criminal conduct also establishes misconduct. See, Kleidosty v. EAB, 482 N.W.2d 416, 418 (Iowa 1992) and Diggs v. EAB, 478 N.W.2d 432 (Iowa App. 1991). Benefits are denied.

DECISION:

The August 26, 2005, reference 02, decision is affirmed. The 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.

tkh/tjc