

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

Claimant	<b>APPEAL 15A-UI-08399-CL-T</b>
Employer	<b>ADMINISTRATIVE LAW JUDGE DECISION</b>
	<b>OC: 06/14/15 Claimant: Appellant (1)</b>

Iowa Code § 96.5(2)a – Discharge for Misconduct  
49 CFR 40.321 – Sealed Record Confidential Information  
Federal Motor Carrier Safety Act (FMCSA) 49 CFR 40 and 382

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the July 16, 2015, (reference 01) unemployment insurance decision that denied benefits based upon misconduct. The parties were properly notified about the hearing. A telephone hearing was held on August 18, 2015. Claimant participated. Employer participated through terminal manager.

**ISSUES:**

Was the claimant discharged for disqualifying job-related misconduct?  
Should the hearing record and decision be publicly disclosed?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a driver from September 6, 2013, and was separated from employment on June 1, 2015, when he was terminated.

Employer's policy on illegal drugs and alcohol states that if an employee tests positive on a drug or alcohol test, he will be terminated immediately. On September 23, 2013, claimant signed a document stating he received and read and understood the policy. The employer is additionally governed by DOT regulations.

In spring 2015, claimant was selected by the Department of Transportation (DOT) to take a random drug test. Claimant provided samples to Concentra in Des Moines, Iowa on May 21, 2015, and May 27, 2015. On approximately June 1, 2015, a medical review officer contacted claimant and informed him he tested positive for amphetamines. The medical review officer asked claimant if he was taking any prescription medications. Claimant informed the medical review officer he had been prescribed and was taking several prescription medications. Claimant specified the medications, which include Tramadol. The medical review officer informed claimant that none of those medications would cause a false positive. Claimant also spoke with terminal manager who informed him he was entitled to have the split sample tested.

Claimant declined to do so as he disagreed with the medical review officer's interpretation of the test results and knew the split sample would contain the same substances as the first test. In other words, a second test would not have changed the results.

Employer terminated claimant based on the positive test result.

### **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 § 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 Federal Motor Carrier Safety Act (FMCSA) generally provides:

Section 382.501 requires the employer or designated employer representative (DER) to remove the driver from performing safety-sensitive functions.

Section 382.601 requires the employer to develop a policy about the misuse of alcohol and

controlled substances and provide proof of employee receipt.

49 CFR 40.15 allows for the use of a service agent, such as a medical review officer (MRO) to act on behalf of the employer to meet DOT testing requirements.

Section 40.131 requires the employer or MRO to speak directly to the employee about the test result.

The employer has met the requirements of the FMCSA and knowledge of those rights and responsibilities is imputed to claimant because of his receipt of the relevant policies. The claimant's drug screen was positive and he is required to be drug free in the workplace. The violation of the known work rule and DOT regulations constitutes misconduct as it presents a safety hazard to the employee and the general public and creates potential liability for the employer. Although claimant disagrees with the medical review officer's interpretation of his test results, employer reasonably relied on the medical review officer's professional judgment as opposed to information claimant obtained from the internet. Additionally, pursuant to DOT regulations, employer had no choice but to abide by the medical review officer's judgment and remove claimant from performing safety-sensitive functions.

The second issue in this case is the effect of the confidentiality requirements of the federal law. The Omnibus Transportation Employee Testing Act of 1991 authorized the United States Department of Transportation (DOT) to prescribe regulations for testing of commercial motor vehicle operators. 49 USC § 31306. Congress required that the regulations provide for "the confidentiality of test results and medical information" of employees tested under the law. 49 USC § 31306(c)(7). Pursuant to this grant of rulemaking authority, the DOT established confidentiality provisions in 49 CFR 40.321 that prohibit the release of individual test results or medical information about an employee to third parties without the employee's written consent. There is an exception, however, to that rule for administrative proceedings (e.g. unemployment compensation hearing) involving an employee who has tested positive under a DOT drug or alcohol test. 49 CFR 40.323(a)(1). The exception allows an employer to release the information to the decision maker in such a proceeding, provided the decision maker issues a binding stipulation that the information released will only be made available to the parties to the proceeding. 49 CFR 40.323(b). Although the employer did not request such a stipulation before the hearing, I conclude that this does cause the information to be excluded from the hearing record.

This federal confidentiality provision must be followed despite conflicting provisions of the Iowa Open Records Act (Iowa Code chapter 22), the Iowa Administrative Procedure Act (APA) (Iowa Code chapter 17A), and Iowa Employment Security Law (Iowa Code chapter 96). Iowa Code § 22.2(1) provides: "Every person shall have the right to examine and copy a public record and to publish or otherwise disseminate a public record or the information contained in a public record." The exhibits, decision, and audio recording in an unemployment insurance case would meet the definition of "public record" under Iowa Code § 22.1-3. Iowa Code § 17A.12(7) provides that contested case hearings "shall be open to the public." Under Iowa Code § 96.6(3), unemployment insurance appeals hearings are to be conducted pursuant to the provisions of chapter 17A. The unemployment insurance rules provide that copies of all presiding officer decisions shall be kept on file for public inspection at the administrative office of the department of workforce development. 871 IAC 26.17(3).

The federal confidentiality laws regarding drug testing and medical information must be followed because, under the Supremacy Clause, U.S. Const., Art. VI, cl. 2, state laws that "interfere with, or are contrary to the laws of congress, made in pursuance of the constitution" are invalid. *Wisconsin Public Intervenor v. Mortier*, 501 U.S. 597, 604 (1991). One way that federal law may pre-empt state law is when state and federal law actually conflict. Such a conflict arises

when "compliance with both federal and state regulations is a physical impossibility or when a state law "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." *Id.* at 605. Although the general principle of confidentiality is set forth in a federal statute (49 USC § 31306(c)(7)), the specific implementing requirements are spelled out in the federal regulation (49 CFR 40.321). The United States Supreme Court has further ruled that "[f]ederal regulations have no less preemptive effect than federal statutes." *Capital Cities Cable, Inc. v. Crisp*, 467 U.S. 691, 699 (1984) (ruling that federal regulation of cable television pre-empted Oklahoma law restricting liquor advertising on cable television, and Oklahoma law conflicted with specific federal regulations and was an obstacle to Congress' objectives).

In this case, the Iowa Open Records law, APA, and Employment Security law actually conflict with the federal statute 49 USC § 31306(c)(7) and the implementing regulations 49 CFR 40.321 to the extent that they would require the release of individual test results or medical information about an employee to third parties beyond the claimant, employer, and the decision maker in this case. It would defeat the purpose of the federal law of providing confidentiality to permit the information regarding the test results to be disclosed to the general public. Therefore, the public decision in this case will be issued without identifying information. A decision with identifying information will be issued to the parties; but that decision, the audio record, and any documents in the administrative file (all of which contain confidential and identifying information) shall be sealed and not publicly disclosed.

**DECISION:**

The July 16, 2015, (reference 01) 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. This record is sealed and shall not be publicly disclosed.

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Decision Dated and Mailed

cal/pjs