

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

RAY P MENDOZA
Claimant

APPEAL NO: 20A-UI-11504-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

ANNETT HOLDINGS INC
Employer

OC: 06/07/20
Claimant: Respondent (2)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the September 10, 2020, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on November 12, 2020. The claimant did not respond to the hearing notice and did not participate in the hearing. Mike Duffy, Vice-President of Maintenance; Chad Minard, Services Manager; and Melissa Zollman, Vice-President of Human Resources; participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time maintenance technician for Annett Holdings from January 24, 2016 to October 14, 2019. He was discharged for refusing a random drug test.

On October 14, 2019, the claimant was selected for a random drug test. Service Manager Chad Minard went to the shop and told the claimant he needed to submit to a random drug screen and he could take the shop vehicle to the test site. The claimant followed Mr. Minard back to his office and stated he could not pass the random drug screen. Mr. Minard called Vice-President of Maintenance Mike Duffy and said the claimant was refusing to take the random drug test. The parties were on speakerphone and Mr. Duffy asked the claimant if he understood the drug testing policy and asked him if he was refusing to submit to testing. The claimant confirmed he understood but stated he would not pass the test. Mr. Duffy asked him directly if he was refusing to take the test because he would not pass and the claimant said yes. Mr. Duffy explained that based on the employer's drug and alcohol policy the claimant's employment would be terminated because refusal to submit to testing results in termination of employment. The claimant received a copy of the policy in the handbook and acknowledged receipt of the handbook and policy January 22, 2016. The employer terminated the claimant's employment for refusing to take a random drug test October 14, 2019.

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, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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 misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged him for reasons constituting work-connected misconduct. Iowa Code section 96.5-2-a. Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duties and obligations to the employer. See 871 IAC 24.32(1).

The claimant worked in a safety sensitive position and was subject to random drug screens. On October 14, 2019, he was selected for a random drug test and refused to take the test. He told the employer he would not pass the test. Under the employer's policy, refusal to take the test is

tantamount to a failed test and the claimant's employment was terminated as a result of his refusal to submit to random drug testing.

Under these circumstances, the administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). Therefore, benefits are denied.

DECISION:

The September 10, 2020, reference 01, decision is reversed. 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.



Julie Elder
Administrative Law Judge

November 18, 2020
Decision Dated and Mailed

je/scn