

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

VAN E HARRIS
Claimant

APPEAL NO. 10A-UI-08210-VS

**ADMINISTRATIVE LAW JUDGE
DECISION**

HARSCO CORP
Employer

OC: 06/07/09
Claimant: Appellant (1)

Section 96.5-2-A – Misconduct

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated May 25, 2010, reference 05, which held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on July 29, 2010. Claimant participated. Employer participated by Chris Welch, Plant Manager. The record consists of the testimony of Chris Welch; the testimony of Van Harris; and Employer's Exhibits 1-7.

ISSUE:

Whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer provides services, such as slag handling and scrap management, to steel mills. The employer operates a facility near Muscatine, Iowa, which is where the claimant worked. He was hired in September 2008, as a full-time laborer. The claimant was terminated on April 23, 2010, for failing to submit to a random drug test.

The employer has a no-tolerance policy for the use of drugs in the workplace. All employees are aware that if they test positive for illegal drugs that termination will result. The policy is in writing and is both posted and contained in the employee handbook. The claimant was given a copy of the employee handbook. The employer has a contract with a third party, Occupational Health, to perform random drug tests at the plant. Occupational Health generates a computer list that randomly selects employees who are identified only by clock number. The employer does not select the employees. The employer does not even know the names of the individuals selected until Occupational Health personnel arrive at the plant on the morning of the tests. If the individuals who are on the list are present, urine samples are collected by Occupational Health personnel.

A random drug screening was scheduled for April 16, 2010. The claimant was on the list. The claimant did not give a sample, saying he had just used the bathroom before the test and could not generate enough urine to give a sample. The claimant left the work site. Chris Welch called the claimant at 11:45 a.m. on April 16, 2010 and told him that it was important that the test be completed. Mr. Welch arranged for the claimant to go to Occupational Health's Clinic at 3:00 p.m. and have the test done there. The claimant agreed to go but never showed up for the test. He then failed to come to work as scheduled on April 19, 2010, and April 20, 2010. There has been no contact from the claimant since the phone call on April 16, 2010.

REASONING AND CONCLUSIONS OF LAW:

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.

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 duty to the employer. Insubordination, which is the continued failure to follow reasonable instructions, constitutes misconduct. See Gilliam v. Atlantic Bottling Company, 453 N.W.2d 230 (Iowa App. 1990) Iowa law permits employers to conduct drug testing in the workplace provided the employer complies with the outline selection process. Iowa Code section 730.5(8). An employer can reasonably expect that an employee will comply with its policies, including drug testing in the workplace. The employer has the burden of proof to show misconduct.

The evidence in this case established that the employer complied with the provisions of Iowa Code section 730.5(8) and could require the claimant to take a drug test. The claimant did not comply while he was at the workplace as he could not produce enough urine for a valid test. The employer then arranged for the claimant to go to the clinic the same day and provide a sample. The claimant agreed but never showed up for the test. He then was a no-call/ no-show at work on April 19, 2010, and April 20, 2010. He never contacted the employer after the phone call on April 16, 2010, where he agreed to take the test.

The claimant failed to comply with his employer's request that he provide a urine sample for a random drug test. This is insubordination. A policy that provides for a drug-free workplace is an important safety measure designed to protect employees from the consequences of substance abuse in the workplace. The claimant had no good reason for refusing to take the drug screen. Misconduct has been established. Benefits are denied.

DECISION:

The decision of the representative dated May 25, 2010, reference 05, is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/css