

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANTHONY L EDWARDS
Claimant

APPEAL NO. 07A-UI-04230-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

JELD-WEN INC
Employer

**OC: 03/25/07 R: 02
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

Jeld-Wen, Inc. (employer) appealed a representative's April 20, 2007 decision (reference 02) that concluded Anthony I. Edwards (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 17, 2007. The claimant participated in the hearing. Edward O'Brien, a TALX representative, appeared on the employer's behalf. Kelly Willet, Richard Wood, and Scott Logan testified on the employer's behalf. During the hearing, Employer Exhibits One through Seven were offered and admitted as evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The employer hired the claimant as a full-time forklift operator on January 29, 2007. Prior to January 29, the claimant worked at the employer's facility as a temporary employee through a temporary employment firm. The claimant passed a drug test before the employer hired him as an employee. At the time of hire, the employer gave the claimant a copy of the employer's drug policy. The claimant understood he was hired under a 90-day probation.

The employer's drug policy informs employees they are subject to random drug tests. Any employee who tests positive is subject to termination. If an employee has worked one year for the employer and admits a substance abuse problem, the employee may seek assistance through the employer's EAP program and remain employed if certain conditions are met. If, however, an employee admits involvement but does not want help through the EAP program, the employer will terminate the employee. (Employer Exhibit Three.)

The first weekend of March 2007, the claimant visited a long-time best friend who had pancreatic cancer. To help his friend, the two of them smoked marijuana and spent time talking. On March 7, the employer randomly chose the claimant's name as an employee who would be randomly tested for drugs. The claimant submitted a sample.

On March 9 the claimant received a call from a medical review officer at the lab who conducted the drug test. The claimant learned his test was positive for marijuana. (Employer Exhibit Five.) When the claimant reported to work on March 12, he immediately reported the result to his supervisor. The employer's human resource department learned about the test results from the testing laboratory on March 13, 2007.

The employer talked to the claimant on March 13. The employer told the claimant that if he did not believe the test result was accurate, he could have the split sample retested. The claimant explained the situation with his friend in early March. The claimant also informed the employer that if a similar situation occurred with another friend, he would follow the same course of action. The employer understood the claimant did not want the split sample retested. On March 13, 2007, the employer discharged the claimant for violating the employer's drug policy. (Employer Exhibit Seven.)

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. It is well established that the employer has the burden to prove disqualifying misconduct. Iowa Code § 96.6 (2). The only reason the employer discharged the claimant was because of a positive drug test on March 7, 2007.

In Eaton v. Iowa Employment Appeal Board, 602 N.W.2d 553 (Iowa 1999), the Iowa Supreme Court determined that in order for a positive drug test to be misconduct sufficient to disqualify someone from unemployment insurance benefits, the drug test had to meet the requirements of the Iowa Drug Testing Law at Iowa Code § 730.5 and that such drug tests would be scrutinized carefully to see that the drug test complied with Iowa law. This decision was expanded by Andrew Harrison v. Employment Appeal Board and Victor Plastics, Inc., 659 N.W.2d 581 (Iowa 2003). In that decision, the Iowa Supreme Court determined that written notice of a positive drug test must be made by certified mail return receipt and the notice must inform the employee of the right to have a second confirmatory test done at a laboratory of the employee's choice and it must tell the employee what the cost of that test will be. The Court further required that an employee be informed that he had seven days to request a second test or confirmatory test. This notice was NOT sent to the claimant in this case.

Since the employer discharged the claimant for violating the employer's drug policy by having a positive drug test, the employer's failure to send the claimant a certified letter as set forth in Iowa Code § 730.5 prevents the positive drug test to disqualify the claimant from receiving unemployment insurance benefits.. Therefore, as of March 25, 2007, the claimant is qualified to receive unemployment insurance benefits.

The employer is not a base period employer. During the claimant's current benefit year, the employer's account will not be charged.

DECISION:

The representative's April 20, 2007 decision (reference 02) is affirmed. The employer discharged the claimant for reasons that do not constitute work-connected misconduct. As of March 25, 2007, the claimant is qualified to receive unemployment insurance benefits, provided he meets all other eligibility requirements. During the claimant's current benefit year, the employer's account will not be charged.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw