

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LARRY W JACK
Claimant

APPEAL NO. 08A-UI-07061-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARGILL MEAT SOLUTIONS CORP
Employer

OC: 06/29/08 R: 03
Claimant: Respondent (1)

Section 96.5-2-a – Discharge
730.5 – Private Sector Drug Free Workplaces

STATEMENT OF THE CASE:

Cargill Meat Solutions Corporation filed a timely appeal from an unemployment insurance decision dated July 24, 2008, reference 01, that allowed benefits to Larry W. Jack. After due notice was issued, a telephone hearing was held August 18, 2008 with Assistant Human Resources Manager Jordan Weber participating for the employer. Exhibit One was admitted into evidence. The claimant did not provide a telephone number at which he could be contacted.

ISSUE:

Was the claimant discharged for misconduct in connection with his employment?

FINDINGS OF FACT:

Having heard the testimony of the witness and having examined all of the evidence in the record, the administrative law judge finds: Larry W. Jack was employed by Cargill Meat Solutions Corporation from May 29, 2007 until he was suspended March 12, 2008 and subsequently discharged on May 19, 2008. Mr. Jack tested positive for alcohol in a test conducted on the employer's premises during work time on March 12, 2008. A urine sample was collected. The employer's witness is unaware if a split sample was collected. He believes but is not certain that Mr. Jack was given the opportunity to have the split sample tested at a laboratory of his choice.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in this record establishes that the claimant was discharged for misconduct in connection with his employment. It does not.

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.

The employer has the burden of proof. See Iowa Code section 96.6-2. The Private Sector Drug Free Workplaces Act establishes the requirements for employer drug tests that are not conducted pursuant to Federal regulations for workers such as truck drivers. Compliance with the Private Sector Drug Free Workplaces Act, section 730.5 of the Iowa Code, is required if a discharge for a failed drug or alcohol test is to be considered misconduct. See Harrison v. Employment Appeal Board, 659 NW 2d 581 (Iowa 2003).

The statute requires the collection of a split sample if the specimen collected is urine. The statute also requires that an employee be sent a certified letter giving the employee seven days in which to request that the split sample be analyzed at a laboratory of the employee's own choosing. The testimony and documentary evidence in this record does not establish that these steps were taken. Based upon the evidence before this administrative law judge, no disqualification may be imposed.

DECISION:

The unemployment insurance decision dated July 24, 2008, reference 01, is affirmed. The claimant is entitled to receive unemployment insurance benefits, provided he is otherwise eligible.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs