

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**RICHARD C COLLINGHAM**  
Claimant

**APPEAL NO. 14A-UI-04970-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**GCC ALLIANCE CONCRETE INC**  
Employer

**OC: 12/15/13  
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge for Misconduct  
730.5 – Drug Testing

**STATEMENT OF THE CASE:**

The employer appealed a department representative's decision dated May 7, 2014, reference 01, that claimant was not discharged for misconduct on April 16, 2014, and benefits are allowed. A hearing was held on June 2, 2014. The claimant did not participate. Tiffany Farence, HR Coordinator, participated for the employer. Employer Exhibit One, pages 1-7, was received as evidence.

**ISSUE:**

The issue is whether the claimant was discharged for misconduct.

**FINDINGS OF FACT:**

The administrative law judge, having heard the witness testimony and having considered the evidence in the record finds that: The claimant was hired September 1, 2013, and last worked a full-time ready-mix driver on April 15, 2014. The claimant received the Drug & Alcohol policy of the employer that contains a provision he is subject to random drug testing.

The claimant consented to a random drug screen on April 8, and he tested positive for marijuana (THC). The positive test was certified by a medical review officer. The MRO contacted claimant to notify him of the positive test. The claimant was not sent a certified notice by the employer of the positive test nor was he advised of his right to request and obtain a confirmatory test of a secondary sample.

The claimant failed to respond to the hearing notice.

**REASONING AND CONCLUSIONS OF LAW:**

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.

The administrative law judge has reviewed the records and files herein and concludes that the employer failed to establish misconduct in the discharge of the claimant on April 15, 2014, because it failed to follow the drug testing requisites of Iowa Code section 730.5.

The law requires that an employee be given written notice by certified mail of a positive drug test, and that he be advised of his right to request and obtain a confirmatory test of a secondary sample. The statute has strict requirements regarding drug testing and the employer failure to send claimant notice by certified mail with the right to request a confirmatory test is a key requisite to proper procedure. This failure means job disqualifying misconduct is not established.

**DECISION:**

The decision of the representative dated May 7, 2014, reference 01, is affirmed. The claimant was not discharged for misconduct in connection with employment on April 16, 2014. Benefits are allowed, provided the claimant is otherwise eligible.

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Randy L. Stephenson  
Administrative Law Judge

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Decision Dated and Mailed

rls/pjs