

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

IAN M BEARD
Claimant

APPEAL NO. 11A-UI-10421-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TEAM STAFFING SOLUTIONS INC
Employer

OC: 07/03/11
Claimant: Appellant (1)

Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from the August 3, 2011 (reference 01) decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call on August 31, 2011. Claimant participated. Employer participated through Claims Administrator Sarah Fiedler.

ISSUE:

The issue is whether claimant was discharged for reasons related to job misconduct sufficient to warrant a denial of benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a laborer and was separated from the assignment and from the employment on February 22, 2011. He was involved in an accident at work that involved property damage, which triggered a drug screen. (Employer's Exhibit 1, page 4) The certified drug screen lab test result was positive for THC and he was notified of the result and the right to a split sample test by certified letter, which he did not pursue. (Employer's Exhibit 1, pages 1 and 3) The claimant said he was subjected to passive ingestion around a family member who smoked but the therapeutic range was listed as > = 20 and the claimant's result was 77.6, well outside of the therapeutic range. (Employer's Exhibit 1, page 2)

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 § 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 met the requirements of Iowa Code § 730.5, because the claimant received a copy of employer's drug and alcohol use policy, he was tested at a certified testing facility as a result of a work injury, the drug screen was positive for marijuana/THC, claimant was notified by certified mail and offered a split sample, and he did not request a second test of the split sample. The claimant is required to be drug free in the workplace. His argument that he was subjected to passive ingestion is not credible, because the test result was significantly outside of the therapeutic range. The violation of the known work rule constitutes misconduct. Benefits are denied.

DECISION:

The August 3, 2011 (reference 01) decision is affirmed. 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.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/kjw