

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

TYRONE SAMMONS
4091 SUFFOLK RD
SOUTH EUCLID OH 44121

HEARTLAND EXPRESS INC OF IOWA
2777 HEARTLAND DR
CORALVILLE IA 52241

Appeal Number: 04A-UI-08973-RT
OC: 07-25-04 R: 12
Claimant: Appellant (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant, Tyrone Sammons, filed a timely appeal from an unemployment insurance decision dated August 13, 2004 reference 01, denying unemployment insurance benefits to him. After due notice was issued, a telephone hearing was held on September 13, 2004, with the claimant not participating. The claimant did not call in a telephone number, either before the hearing or during the hearing, where he or any of his witnesses could be reached for the hearing, as instructed in the notice of appeal. Lea Kahrs, Human Resources Assistant, and Gary King, Director of Safety, participated in the hearing for the employer, Heartland Express, Inc., of Iowa. The administrative law judge takes official notice of Iowa Workforce Development unemployment insurance records for the claimant.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: The claimant was employed by the employer as a full-time over-the-road truck driver operating a commercial motor vehicle, from February 4, 2004 until he was discharged on June 9, 2004. The claimant was discharged for violating the employer's policy concerning drug testing. The employer has a written policy providing for drug testing of its over-the-road truck drivers and commercial motor vehicle operators. The claimant received a copy of the policy and signed an acknowledge. A random urine sample was taken from the claimant and tested at a certified lab and the test results showed positive for heroine. The claimant's urine sample was split. The employer has a proper chain of custody of the sample. The employer has a medical review officer who is a licensed physician. The medical review officer verified the test results and notified the claimant by telephone of the positive test and further notified the claimant that he had a right to a confirmatory test within 72 hours. The claimant did not request a confirmatory test within the time period. Because of the positive drug test the claimant was discharged. The employer conducts drug tests on its truck drivers because of a federal requirement.

REASONING AND CONCLUSIONS OF LAW:

The question presented by this appeal is whether the claimant's separation from employment was a disqualifying event. It was.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The employer's witness, Lea Kahrs, Human Resources Assistant, credibly testified, and the administrative law judge concludes, that the claimant was discharged on June 9, 2004 for failing a random drug test when he tested positive pursuant to the employer's written drug testing policy for heroine. Both Ms. Kahrs and the employer's other witness, Gary King, Director of Safety, credibly testified that the claimant is an over-the-road truck driver operating a commercial motor vehicle. 49 USC 31306(B) requires that motor carriers such as the employer here, conduct, among other tests, random testing of operators of commercial vehicles for the use of a controlled substance in violation of law or United States Government regulation. The claimant here is such an operator of a commercial motor vehicle. The employer has a written drug testing policy and conducted the drug test administered to the claimant as required by this section. According to Iowa Code Section 730.5(2) of the Iowa drug testing law at Iowa Code 730.5, does not apply to drug tests conducted on employees required to be tested pursuant to federal statutes, federal regulations or orders issued pursuant to federal law. The administrative law judge concludes that the claimant's drug test here was required by federal law. Accordingly, the administrative law judge concludes that the claimant's drug test does not need to comply with Iowa's drug testing law at Iowa Code Section 730.5.

The issue then becomes whether the drug test administered to the claimant complies with federal law, as set out at 49 CFR subtitle A part 40. The administrative law judge concludes that the employer has the burden to prove disqualifying misconduct and here, that the employer's drug test complies with federal regulations. The administrative law judge concludes that the employer has met its burden of proof to demonstrate by a preponderance of the evidence that the drug test administered on the claimant complies with federal regulations in 49 CFR subtitle A part 40. The employer's witness, Gary King, Director of Safety, credibly testified that a urine sample was taken by the claimant and that the sample was split and sent to a certified lab for testing and the test showed positive for heroine. Mr. King also credibly testified that the employer has an appropriate chain of custody for the specimen, which was tested. Mr. King also credibly testified that the employer has a medical review officer who is a licensed physician and who directly contacted the claimant by telephone and informed the claimant of the positive drug test and further informed the claimant that he had a right to a confirmatory test within 72 hours. Mr. King further credibly testified that the claimant did not request a confirmatory test in the 72 hours. Accordingly, the administrative law judge concludes that the employer's drug test complies with federal regulations noted above and, as a consequence, the claimant's positive drug test is disqualifying misconduct. Therefore, the administrative law judge concludes that the claimant was discharged for disqualifying misconduct and, as a consequence, he is disqualified to receive unemployment insurance benefits. Unemployment insurance benefits are denied to the claimant until or unless he qualifies for such benefits.

DECISION:

The representative's decision dated August 13, 2004, reference 01, is affirmed. The claimant, Tyrone Sammons, is not entitled to receive unemployment insurance benefits until or unless he requalifies for such benefits, because he was discharged for disqualifying misconduct.

b/b