

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LAURA V BIERLE
Claimant

APPEAL NO. 11A-UI-16402-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WELLMAN DYNAMICS INC
Employer

**OC: 11/20/11
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Laura V. Bierle filed a timely appeal from a representative's decision dated December 14, 2011, reference 01, that held claimant ineligible to receive unemployment insurance benefits. After due notice, a telephone conference hearing was held on January 25, 2012. The claimant participated personally. Although duly notified, the employer did not participate.

ISSUE:

At issue is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment benefits.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Laura Bierle was employed by Wellman Dynamics Inc. from January 6, 2000 until October 31, 2011 when she was discharged for violation of the last-chance employment agreement. Ms. Bierle was employed as a full-time maintenance/utility worker and was paid by the hour.

On October 10, 2011 the claimant was drug tested based upon reasonable suspicion. The test resulted in a positive test for methamphetamine. The claimant was offered participation in the company's rehabilitation treatment/counseling program and agreed to abide by the terms of the agreement that allowed for random testing and the requirement that the claimant successfully complete all portions of the rehabilitation/counseling.

Ms. Bierle was discharged after she again tested positive in violation of the last-chance agreement on or about October 31, 2011.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes the claimant was discharged for misconduct in connection with her employment. It does

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.

In this matter Ms. Bierle was discharged because she failed to abide by the terms of a last-chance type agreement between the claimant and Wellman Dynamics Inc. The claimant had previously tested positive for controlled substances in August 2011. It appears that the claimant did not dispute the positive test results at that time and willingly entered into a last-chance agreement with the company that allowed the claimant to remain employed providing that she entered into rehabilitation and counseling and completed the counseling program. The agreement also provided for random testing for a 12-month period.

Ms. Bierle was discharged after a random drug screen showed positive test results for methamphetamine. The testing was done at a medical facility and the officer of the medical facility spoke with Ms. Bierle about any possible medications that she was taking that could have affected test results. The company attempted to send Ms. Bierle notification of the positive test results and further testing rights via certified letter, return receipt requested. However, the claimant did not claim the letter from the post office as she was in a treatment facility at that time.

Although the claimant maintains that she should not have tested positive for methamphetamine, the administrative law judge concludes that the evidence in the record establishes that the claimant was discharged for violating the last-chance agreement between the parties. The claimant's conduct showed a disregard for the employer's interests and standards of behavior

and thus was disqualifying under the provision of the Employment Security Law. Unemployment insurance benefits are withheld.

DECISION:

The representative's decision dated December 14, 2011, reference 01, is affirmed. The claimant is disqualified. Unemployment insurance benefits are withheld until the claimant works in and has been paid wages for insured work equal to ten times her weekly benefit and is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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