

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**AMANDA K STOCKDALE**  
Claimant

**APPEAL NO. 14A-UI-04406-G**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**GENESIS HEALTH SYSTEM**  
Employer

**OC: 03/30/14  
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Employer filed an appeal from a decision of a representative dated April 24, 2014, reference 02, which held claimant eligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on October 6, 2014 in Davenport, Iowa. Claimant participated personally. Employer participated by Brandy Tiesman, Human Resources Director. Employer's Exhibits One through Three and claimant's Exhibit A were admitted into evidence.

**ISSUE:**

The issue in this matter is whether claimant was discharged for misconduct.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on March 20, 2014.

Claimant was discharged on April 8, 2014 by employer because she tested positive for marijuana during a mandatory drug screen. Employer was discharged on the first offense for a positive drug test, and had not been warned about suspected drug use on a prior date. Claimant was not sent a notice by certified mail of the right to have a split sample tested.

**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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

Iowa Admin. Code r. 871-24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

In this matter, the evidence has failed to establish that claimant was discharged for an act of misconduct when claimant tested positive for marijuana during a mandatory drug testing at work. Claimant was not warned concerning this policy.

Iowa Code § 730.5 allows drug testing of an employee if, among other conditions, the employer has "probable cause to believe that an employee's faculties are impaired on the job." Iowa Code section 730.5(8) sets forth the circumstances under which an employer may test employees for the presence of drugs. Claimant was selected for unannounced testing and was not tested as part of drug rehabilitation. See section 730.5(8)a, b. The testing on claimant was not part of a pre-employment screening and was not required by federal law or by law enforcement. See 730.5(8)d, e. The testing was not done as a result of claimant being involved in an accident at work. See 730.5(8)f. The only other basis under which the employer could legitimately test claimant was reasonable suspicion. See 730.5(8)c.

The definition of "reasonable suspicion" is found at section 730.5(1)h. The employer acknowledged that there had been observations of Claimant at work that would lead to the conclusion that claimant was using drugs. The employer did not cite any abnormal conduct or erratic behavior while at work or any significant deterioration in her job performance. There was no suggestion that claimant had tampered with any drug test during this employment or was

involved in any accident while at work. There was no evidence that claimant manufactured, sold, or used drugs while at work or while operating the employer's vehicle. The only reason the employer tested claimant was a notice from the pharmacy that showed claimant's narcotic drugs had been wasted or destroyed in a higher proportion than her co-workers.

Upon a positive drug screen, Iowa Code § 730.5(3)(f) requires that an employer offer substance abuse evaluation and treatment to an employee the first time the employee has a positive alcohol test. Iowa Code § 730.5(9) requires that a written drug screen policy be provided to every employee subject to testing. Iowa Code § 730.5(7)(i)(1) mandates that an employer, upon a confirmed positive drug or alcohol test by a certified laboratory, notify the employee of the test results by certified mail and the right to obtain a confirmatory test before taking disciplinary action against an employee. Upon a positive drug screen, Iowa Code § 730.5(9)(g) requires, under certain circumstances, that an employer offer substance abuse evaluation and treatment to an employee the first time the employee has a positive drug test. The Iowa Supreme Court has held that an employer may not "benefit from an unauthorized drug test by relying on it as a basis to disqualify an employee from unemployment compensation benefits." *Eaton v. Iowa Employment Appeal Board*, 602 N.W.2d 553, 557, 558 (Iowa 1999).

The last incident, which brought about the discharge fails to constitute misconduct because claimant was not sent notice of her rights by certified mail. This requirement is mandatory. There is no alternate method of notice allowed. In person notice of rights is not sufficient. The Iowa Courts have held that certified mail notice is mandatory. Harrison v. Employment Appeal Board, 659 NW2d 581 (IA 2003). The test was invalid due to the failure to follow Iowa law. The administrative law judge holds that claimant was not discharged for an act of misconduct and, as such, is qualified for the receipt of unemployment insurance benefits.

**DECISION:**

The decision of the representative dated April 24, 2014, reference 02, is affirmed. Claimant is eligible to receive unemployment insurance benefits, provided claimant meets all other eligibility requirements.

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Duane L. Golden  
Administrative Law Judge

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Decision Dated and Mailed

dlg/pjs