

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SCOTT F ALLSPACH**  
Claimant

**APPEAL NO. 08A-UI-10573-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**JELD-WEN INC**  
Employer

**OC: 07/06/08 R: 02  
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

The employer appealed an unemployment insurance decision dated November 4, 2008, reference 03, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on December 1, 2008. The parties were properly notified about the hearing. The claimant failed to participate in the hearing. Deb Shelburne participated in the hearing on behalf of the employer with witnesses, Chris Juni and Travis Smith. Exhibits One through Three were admitted into evidence at the hearing.

**ISSUE:**

Was the claimant discharged for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant worked full time for the employer as a laborer from July 2007 to December 28, 2007. He was informed and understood that under the employer's work rules, employees were required to submit to a drug test under certain circumstances, including when chosen for a random drug test, and were subject to termination if they tested positive for illegal drugs.

Pursuant to the policy, the claimant was required to submit to a random drug test on December 18, 2007. A urine sample was taken from the claimant and analyzed using an initial drug screen test and subsequent confirmatory test by a certified laboratory.

The employer received a report from the medical review officer that stated the verified test result was "Positive." The report does not state what drug the claimant tested positive for. There is no evidence that the claimant was sent a letter by certified mail-return receipt requested informing him about the results of the drug test and his right to have a split sample tested.

On December 28, 2007, the employer discharged the claimant for testing positive for a drug.

## REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

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.

The Iowa Supreme Court has ruled that an employer cannot establish disqualifying misconduct based on a drug test performed in violation of Iowa's drug testing laws. Harrison v. Employment Appeal Board, 659 N.W.2d 581 (Iowa 2003); Eaton v. Employment Appeal Board, 602 N.W.2d 553, 558 (Iowa 1999). As the court in Eaton stated, "It would be contrary to the spirit of chapter 730 to allow an employer to benefit from an unauthorized drug test by relying on it as a basis to disqualify an employee from unemployment compensation benefits." Eaton, 602 N.W.2d at 558.

The employer, therefore, has failed to meet its burden of proving that the testing was in compliance with chapter 730. There is no evidence that the claimant was sent a letter by certified mail-return receipt requested informing him about the results of the drug test and his right to have a split sample tested as required by Iowa Code 730.5-7-i. Also, the employer has not established the drug the claimant tested positive for, which is an essential requirement for disqualification.

**DECISION:**

The unemployment insurance decision dated November 4, 2008, reference 03, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

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Steven A. Wise  
Administrative Law Judge

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Decision Dated and Mailed

saw/css