

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JENNIE WIGGINS

Claimant

APPEAL NO. 09A-UI-18554-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

GRAPETREE MEDICAL STAFFING INC

Employer

Original Claim: 11/15/09

Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Jennie Wiggins (claimant) appealed an unemployment insurance decision dated December 9, 2009, reference 01, which held that she was not eligible for unemployment insurance benefits because she was discharged from Grapetree Medical Staffing, Inc. (employer) for work-related misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on January 21, 2010. The claimant participated in the hearing. The employer participated through Tim Kinnetz, Chief Executive Officer. Kelly Seymour, Director of Operations, and Jeanenne Kinnetz, Human Resources Generalist, were present for the hearing but offered no testimony. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

The issue is whether the employer discharged the claimant for work-related misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The employer is a temporary employment agency that provides on-call medical care for contract clients. The claimant was employed as a licensed practical nurse from June 3, 2009 through November 15, 2009 and was most recently assigned to Genesis Medical Center. She was discharged for violation of the employer's drug and alcohol policy when she refused to take a drug test on November 15, 2009 based on reasonable suspicion. The employer has a written drug policy that informs employees of the drug testing procedures and the consequences for refusing to take a drug test. The claimant signed an acknowledgement of these policies on June 14, 2009 and knew she would be terminated for refusing to take a drug test.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has

discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a.

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 the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The claimant was discharged for her refusal to take a drug test. 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.

Under Iowa Code § 730.5-9-a, the employer's written drug policy is required to provide uniform requirements for what disciplinary action can be taken upon receipt of "a confirmed positive test result for drugs or alcohol or upon the refusal of the employee or prospective employee to provide a testing sample." Iowa Code § 730.5-9-a states that an employer can take disciplinary action including termination of employment, upon receipt of "a confirmed positive test result for drugs or alcohol ... or upon the refusal of an employee or prospective employee to provide a testing sample."

The claimant was aware her employment would be terminated if she refused to take the drug test but continued to refuse. Her refusal to submit to a drug test in accordance with the employer's drug policy amounts to an intentional and substantial disregard of the employers' interests. The claimant's termination was in compliance with chapter 730.5. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

DECISION:

The unemployment insurance decision dated December 9, 2009, reference 01, is affirmed. The claimant is not eligible to receive unemployment insurance benefits, because she was discharged from work for misconduct. Benefits are withheld until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/kjw