

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RICHARD L ROGERS
Claimant

APPEAL NO. 09A-UI-18787-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

RICHARD O JACOBSON ET AL
JACOBSON INDUSTRIAL SERVICES
Employer

OC: 06/28/09
Claimant: Respondent (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Jacobson Industrial Services (employer) appealed a representative's December 9, 2009 decision (reference 06) that concluded Richard Rogers (claimant) was discharged and there was no evidence of willful or deliberate misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for January 28, 2010. The claimant participated personally. The employer participated by Elizabeth Jerome, Account Manager, and Nate Cloe, Assistant Operations Manager. The employer offered and Exhibit One was received into evidence.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on September 30, 2009, as a temporary employee. He was assigned to work at Titan Tire on February 18, 2009, as a full-time temporary warehouseman. The claimant probably received a copy of the employer's handbook and may have signed for its receipt. The handbook contains the employer's drug policy. The employer conducts random drug testing and has a no-tolerance policy with regard to drug use.

On October 22, 2009, the employer asked the claimant to submit a sample for urinalysis. The results of the testing were received by the employer on November 5, 2009. The results indicated the claimant tested positive for methamphetamine. The employer sent the claimant a letter on November 5, 2009. The letter notified the claimant that he tested positive, terminated him and offered the opportunity to test the split sample. The employer sent the letter by certified mail to the claimant's last-known address. The claimant did not receive the letter. He filed for unemployment insurance benefits on or about November 7, 2009. The claimant called the employer and laboratory in December 2009, asking for information about his employment. The claimant does not know why the sample tested positive.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

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 employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Iowa Code section 730.5(9) requires that a written drug screen policy be provided to every employee subject to testing. Iowa Code section 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. 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 at 558.

The employer failed to give the claimant notice of the test results according to the strict and explicit statutory requirements. It terminated the claimant in the same letter in which he was notified of the results. Benefits are allowed.

DECISION:

The representative's December 9, 2009 decision (reference 06) is affirmed. The employer has not met its proof to establish job-related misconduct. Benefits are allowed.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/css