

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROBERT G JONES
Claimant

APPEAL NO. 09A-UI-01029-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BE & K CONSTRUCTION COMPANY
Employer

**OC: 11/23/08 R: 04
Claimant: Appellant (2)**

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Robert G. Jones (claimant) appealed a representative's January 16, 2009 decision (reference 01) that concluded he was not qualified to receive benefits, and the account of B. E. & K. Construction Company (employer) would not be charged because the claimant had been discharged for disqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 9, 2009. The claimant participated in the hearing. T. K. Rolls, the payroll manager, appeared on the employer's behalf. 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:

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on June 11, 2007. The claimant worked as a full-time millwright. At the time of hire, the claimant received a copy of the employer's drug and alcohol policy.

During his employment, the employer asked the claimant to submit to random drug tests, which the claimant passed. In mid-October, the claimant hurt his knee. His physician restricted the claimant from working for a week and gave him prescription pain medication. After the claimant was released to return to work on October 24, he still took the prescription pain medication. On October 31, 2008, the employer asked the claimant to submit to a random drug test. The claimant told the employer's safety director he had been on pain medication for at least a week.

On November 24, the employer sent the claimant a certified letter informing the claimant he was discharged because he had a positive drug test. No one from the laboratory or clinic contacted the claimant about the results of the test or asked him what if any medication he was taking. The employer did not send the claimant a certified letter informing he had the right to have the split sample tested at a lab of his choice.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. 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.

In this case, the employer violated Iowa Code § 730.5-7-i by failing to notify the claimant in writing by certified mail, return receipt requested, of the results of the test and his right to have the split sample of his collected urine tested at his request. There is no evidence that the urine sample was split, which violates Iowa Code § 730.5-7-b. The employer has failed to meet its burden of proving the testing was in compliance with chapter 730. Therefore, the employer did not establish that the claimant committed work-connected misconduct. As of November 23, 2008, the claimant is qualified to receive benefits.

DECISION:

The representative's January 16, 2009 decision (reference 01) is reversed. The employer did not establish that the claimant's drug test complied with Iowa Code 730. Therefore, the evidence does not establish that the claimant committed work-connected misconduct. As of November 23, 2008, the claimant is qualified to receive benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css