

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DOUG D CROOKS
Claimant

DARLING INTERNATIONAL INC
Employer

APPEAL 15A-UI-05352-EC-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/12/15
Claimant: Appellant (1)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 730.5 – Private Sector Drug-free Workplaces

STATEMENT OF THE CASE:

The claimant/appellant, Doug Crooks, filed an appeal from the April 28, 2015, (reference 01) unemployment insurance decision that denied benefits based upon a discharge for misconduct, for violation of a known company rule, specifically, a positive drug test result following a work-related accident. The parties were properly notified about the hearing. A telephone hearing was held on June 11, 2015. The claimant participated, along with his attorney, Dennis McElwain. The employer, Darling International Inc., participated through Brad Frost. The employer submitted exhibits which were marked as Exhibits E1-E8 and were admitted into the record without objection. The claimant submitted exhibits which were premarked as CI-A through CI-G, and were admitted into the record without objection.

ISSUE:

Whether or not the separation from employment was a discharge for misconduct under the applicable law?

FINDINGS OF FACT:

The administrative law judge finds the following facts to be undisputed, after reviewing all the evidence admitted into the record in this matter: The claimant was employed full-time in the lab of this plant in Sioux City, Iowa, where he helped to load out the finished product. The employer is a union plant. The claimant is a bargaining unit employee, subject to and governed by the labor agreement. He worked for this employer from January 9, 1989, until his employment ended following positive drug screen for marijuana after a work-related accident on January 28, 2015. The claimant was discharged from this employment, effective February 10, 2015, due to this violation of the labor agreement rule.

According to the employer, he was discharged from employment because he was under the influence of marijuana while working. He violated the employer's substance abuse policy. (Frost testimony; Exhibit CI-F)

On January 28, 2015, the claimant began working at 7:30 a.m. He was scheduled to work until 3:30 p.m. He took a morning break at about 9:00 a.m. He had lunch at about noon with at least ten people. He did not leave the premises.

After lunch that day, the claimant was helping a truck driver pull a tarp over the truck. At about 1:30 p.m., the claimant fell off a platform or catwalk, sustaining injuries. (Frost testimony) He was transported by ambulance to the emergency department at a local hospital. (Exhibit CI-A) He remained at the hospital until January 30, 2015. (Exhibit CI-B, pg. 11)

On January 28, 2015, as part of the medical treatment for his injuries, the claimant provided urine specimens. These urine specimens were screened for drugs and other pertinent data. (Exhibit CI-B)

A urine specimen was collected at 5:15 p.m. on January 28, 2015. This urine specimen was listed as "none detected" for cannabinoids, also commonly known as marijuana. This urine specimen was "none detected" for all the listed and tested drugs. (Exhibit CI-B, pg. 7, 27)

A urine specimen was collected on the morning of January 29, 2015, to be tested in accordance with the employer's policy. This urine specimen was tested for drugs. The drug test report for this urine specimen was positive for marijuana. This test result was provided to the employer. (Exhibits CI-D, pg. 2; E2) The employer did not have immediate access to the claimant's other medical records or drug screen results. The employer's representative did not receive the results of the other drug screens. The employer based its action on the drug screen it ordered and the results it obtained. (Frost testimony)

The results of this drug screen were provided to the claimant in writing delivered by certified mail, return receipt requested. (Exhibits E1, E2; CI-D) The claimant was offered a split sample test. (Exhibit E1) He declined this opportunity. The claimant had previously been referred for substance abuse treatment, in 2004, in connection with another drug screen for marijuana. (Exhibits E3, E8, E9) The employer provided documentary evidence of a written drug screen policy, which is included in the current labor agreement. (Exhibits E4, E5, E6)

The claimant knew the employer's policies regarding post-accident drug testing and drug test results. He knew that he would be fired if a drug test result was positive. (Crooks testimony)

The claimant provided a urine specimen on February 19, 2015, which was negative for marijuana. (Exhibits CI-E, CI-G) According to the claimant, he had not used marijuana for 11 years. He has been clean since that time. He underwent other random drug tests at his employment. All of these drug tests were clean. The claimant denied any drug use on January 28, 2015. (Crooks testimony)

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct. Benefits are denied.

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).

The employer has the burden of proving disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982).

An Iowa statute sets forth several requirements and conditions for an employer to follow in connection with any drug testing policy. Iowa Code § 730.5 allows drug testing of an employee who is involved in an accident in the workplace. Iowa Code § 730.5(8)f. It also allows testing as condition of continued employment or hiring. Iowa Code § 730.5(4). The statute requires that a written drug screen policy be provided to every employee subject to testing. Iowa Code § 730.5(9). The statute specifically 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 return receipt requested, and the right to obtain a confirmatory or split-sample test before taking disciplinary action against an employee. Iowa Code § 730.5(7)(i)(1); *Harrison v. Iowa Emp't Appeal Bd.*, 659 N.W.2d 581, 585-586 (Iowa 2003).

Upon a positive drug screen, the statute 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. Iowa Code § 730.5(9)(g). This claimant had a previous positive drug test result in 2004. He signed a conditional reinstatement agreement that included random drug tests for a certain period of time.

The Iowa Supreme Court 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 Emp't Appeal Bd.*, 602 N.W.2d 553, 557, 558 (Iowa 1999).

The statute permits an employer to take action, including termination, “upon receipt of a confirmed positive test result for drugs or alcohol which indicates a violation of the employer’s written policy...” Iowa Code § 730.5(10)a. The statute also addresses false positive test results. Iowa Code § 730.5(12). The conditions listed do not apply to the circumstances surrounding this incident and test result.

After considering and evaluating all the evidence presented, and applying that evidence to the requirements of the statute, I conclude that the employer met the requirements of Iowa Code § 730.5. The claimant received a copy of employer’s drug and alcohol use policy, as part of the labor agreement. He knew the consequences of a positive drug test result, and he knew that he would be tested for drugs in connection with the workplace accident. His urine specimen was tested at a certified testing facility as a result of a work injury. That drug screen was positive for marijuana. The claimant was notified by certified mail and offered a split screen sample, and he did not request a second test of the split sample. Employees are required to be drug free in the workplace. The violation of the known company policy constitutes misconduct. Benefits are denied.

DECISION:

The April 28, 2015, (reference 01) decision is affirmed. The claimant was discharged from employment due to job-related misconduct, violation of a known company rule. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Emily Gould Chafa
Administrative Law Judge

Decision Dated and Mailed

ec/pjs