

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANGELA K SANDERS-KRUEGER
Claimant

APPEAL NO: 100-UI-13664-S

PRIORITY COURIER INC
Employer

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 05/16/10
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge
871 IAC 24.32(1) – Definition of Misconduct
49 CFR 40.321 – Protective Order

STATEMENT OF THE CASE:

The claimant appealed a department decision dated June 10, 2010, reference 01, that held she was discharged for misconduct on May 20, 2010, and benefits are denied. A hearing was held on July 26, and an ALJ issued a decision on August 24, 2010. The claimant appealed, and the EAB remanded this matter for a new hearing due to a lost recording.

A hearing was held on December 13, 2010. The claimant, and her Attorney, Benjamin Humphrey participated. Fred Anderson, Regional Manager, and John Jero, Terminal Manager, participated for the employer. Employer Exhibits 1, 2 & 3 and Claimant Exhibit A were received as evidence.

Prior to the hearing the employer requested a protective order to seal the recording and testimony. The claimant did not object.

ISSUE:

Whether the claimant was discharged for misconduct in connection with employment.

Whether the employer request for protective Order should be granted.

FINDINGS OF FACT:

The administrative law judge having heard the testimony of the witnesses, and having considered the evidence in the record, finds: The claimant began employment as a full-time driver on March 24, 2009, and last worked for the employer on May 19, 2010. An employee told terminal manager Jero he heard claimant make a statement that “as soon as I am clean – I am out of here”. Jero requested claimant to submit to a random drug screen testing knowing that it was based on the employee statement (suspicion). Jero had not been certified for drug testing, and he was uncertain whether the employer was using Federal or Iowa D.O.T regulations for the request procedure. Claimant submitted to testing on May 14.

On May 19, a medical review officer advised claimant she tested positive. Claimant called Jero and set-up a meeting involving her husband. The employer had not received the drug test result, but claimant told Jero it was positive. When claimant asked what would happen, she was told she would be discharged, so she turned in her ID and fuel card, and left. Claimant called Jero the next day to state she was not quitting, and he told her she was no longer an employee. When the employer protested claimant's claim, it stated she was discharged for misconduct on May 20, 2010.

REASONING AND CONCLUSIONS OF 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 administrative law judge concludes the employer has failed to establish claimant was discharged for misconduct in connection with employment on May 20, 2010.

The claimant's act of turning her ID and fuel card was in response to the employer letting her know she would be discharged for a positive drug test that is confirmed in its employer protest to her claim on May 20, 2010. The employer violated all drug testing laws whether Federal or State by requesting her to submit to a "random" test knowing it was based on a suspicion that does not constitute reasonable suspicion. The claimant's subsequent actions are a product of an erroneous drug test that is likened to the "fruit from the poisonous tree" doctrine as it applies to a criminal case. The claimant did not voluntarily quit but was coerced by a belief she had

failed a drug test that was wrongly administered. Since the test was illicit from the onset, the result may not be considered as evidence of misconduct.

The administrative law judge further concludes the employer request for a protective order to seal the record in this matter is granted without claimant objection subject to persons who may have access under 49 CFR 40.321.

DECISION:

The department decision dated June 10, 2010, reference 01, is reversed. The claimant was not discharged for misconduct on May 20, 2010. Benefits are allowed, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/pjs