

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ADAM B BRANTON**  
Claimant

**APPEAL NO: 14A-UI-11525-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CNH AMERICA LLC**  
Employer

**OC: 10/12/14**  
**Claimant: Respondent (1)**

Iowa Code § 96.5(2)a – Discharge

**PROCEDURAL STATEMENT OF THE CASE:**

The employer appealed a representative's October 31, 2014 (reference 01) determination that held the claimant qualified to receive benefits and the employer's account subject to charge because the claimant had been discharged for nondisqualifying reasons. The claimant participated at the November 26 hearing. Jill Dunlap, the human resource labor relations manager, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is qualified to receive benefits.

**ISSUE:**

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

**FINDINGS OF FACT:**

The claimant started working for the employer in August 2013. The employer hired the claimant as a painter but the claimant was working as a full-time assembly employee when his employment ended. When the claimant started working, he received the employer's written drug policy. The policy in part informs employees the employer can request an employee to take a drug test if the employer has reasonable suspicion an employee is under the influence at work.

On October 14, 2014 the employer's nurse reported that she believed the claimant was under the influence of alcohol or a drug. She reported the claimant had slurred speech, appeared agitated and disoriented, his eyes were bloodshot; he staggered or stumbled when he walked, and his clothing was messy. When Dunlap asked the claimant to take a drug test, she observed that his eyes were bloodshot, his speech was slurred, and he appeared agitated or antsy.

The claimant went to the local hospital and had a breathalyzer and drug test done. The claimant's test result was negative for alcohol. The preliminary test indicated he had a positive test result for marijuana and cocaine. The claimant's urine sample was sent to a second lab to confirm the positive test for these substances.

The employer suspended the claimant on October 14. On October 15 the employer learned the second lab tests confirmed the claimant had a positive drug test. A medical review officer talked to the claimant about the result of his drug test and asked what if any medications the claimant was taking.

On October 15 the employer informed the claimant he was discharged for having a positive drug test. The claimant did not receive a certified letter informing him he could have another lab test a split sample of his urine sample for drugs. Although the employer's drug policy allows employees who have worked more than year to go to treatment, the employer did not grant the claimant this request because of the claimant's attendance.

The claimant established a claim for benefits during the week of October 12, 2014. He has filed claims since October 12, 2014. The employer participated at the fact-finding interview.

### **REASONING AND CONCLUSIONS OF LAW:**

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. Iowa law provides for drug testing based on "reasonable suspicion," which is defined in Iowa Code § 730.5(1)h as testing based upon evidence that an employee is using or has used alcohol or other drugs drawn from specific objective and articulable facts and reasonable inferences drawn from those facts in light of experience. The statute goes on to provide examples of reasonable suspicion, including (1) direct observation of drug use or manifestations of being impaired due to drug use, (2) erratic behavior or significant job performance deterioration, (3) a report of drug use provided by a reliable and credible source, (4) evidence of drug test tampering, (5) evidence of a work-related injury, or (6) evidence that an employee manufactured, sold, distributed, solicited, possessed, used, or transferred drugs while working or while on the employer's premises. Iowa Code § 730.5(1)h.

The employer established reasonable suspicion to request that the claimant take a drug test. 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 along with the actual cost of that test. These requirements were deemed mandatory in *Harrison*.

The fact the claimant asked the employer to go to treatment, does not excuse the employer's failure to follow the requirement of Iowa Code § 730.5(7)i. The Iowa Supreme Court focused on whether the drug test complied with the law and not whether the claimant admitted to using drugs. The employer discharged the claimant because he had a positive drug test. Based on the employer's failure to comply with Iowa's drug testing laws, the claimant cannot be held to be disqualified from receiving benefits. As of October 12, 2014 the claimant is qualified to receive benefits.

**DECISION:**

The representative's October 31, 2014 (reference 01) determination is affirmed. The employer discharged the claimant for business reasons, but work-connected misconduct cannot be established when the employer did not follow the requirements of Iowa's drug testing laws. As of October 12, 2014 the claimant is qualified to receive benefits, provided he meets all other eligibility requirements. The employer's account is subject to charge.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

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