

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PHILLIP D SEYMOUR
Claimant

APPEAL NO. 10A-UI-16389-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**WEST LIBERTY FOODS LLC
WEST LIBERTY FOODS**
Employer

**OC: 10/24/10
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Phillip Seymoure filed a timely appeal from a representative's decision dated November 19, 2010, reference 02, that denied unemployment insurance benefits. After due notice, a telephone conference hearing was held on January 18, 2011. The claimant participated personally. The employer participated by Ms. Monica Dyar, Human Resource Supervisor. Exhibit One was offered but not received as the claimant did not receive a copy.

ISSUE:

At issue is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Phillip Seymoure was employed by West Liberty Foods LLC from May 19, 2008 until July 29, 2010 when he was discharged from employment. Mr. Seymoure worked as a full-time production worker and was paid by the hour. Claimant's immediate supervisor was Marvin Rung.

On July 20, 2010, it was reported to company management that Mr. Seymoure had been observed exchanging a packet of "white powder" with another male employee on a production floor. Because it appeared that the claimant and other worker might be violating company policy by possessing or exchanging a controlled substance, Mr. Seymoure and the other worker were informed that they would have to undergo drug testing for cause based upon the company's written drug testing policies. The other worker declined to be tested, however, Mr. Seymoure agreed.

Initial testing took place during working hours. The specimens were split and identified and sent to a medically certified laboratory for testing. The claimant was contacted by a medical review officer employed by the testing laboratory to determine whether Mr. Seymoure had ingested other substances or medication that may have skewed the drug testing results. The claimant was informed of the positive test results for the presence of cocaine in his system by a certified

letter, return requested. Mr. Seymoure was also informed by letter of his right to request confirmatory testing, however, the claimant elected not to do so.

It is the claimant's position that he believes that the controlled substances was introduced into his system surreptitiously by one or more other workers with whom the claimant had an ongoing dispute. Mr. Seymoure believes that the other worker or workers planned to have the claimant undergo drug testing so that the claimant would lose his position with the company. The individuals who reported the suspicious activity regarding the packet of "white powder" were not the individuals Mr. Seymoure had named as having a reason for causing his discharge from employment.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether Mr. Seymoure was discharged for work-connected misconduct as defined by the unemployment insurance 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 Iowa Supreme Court has ruled that an employer cannot establish disqualifying misconduct based upon 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. Iowa Employment Appeal Board, 602 N.W.2d 553, 558 (Iowa 1999). 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 and employee for unemployment compensation benefits.”

To comply with the law drug or alcohol must be carried out within the terms of the written policy that has been provide to every employee subject to testing and is available for review by employees. Iowa Code section 730.5-9-a(1). Mr. Seymoure was provided a copy of the company’s written policy. The evidence in the record shows that the test was taken during working hours and that the test results were determined by a medically certified reviewing laboratory and that Mr. Seymoure was contacted by a medical review officer to determine whether there were any other factors that may have skewered the drug testing results. The evidence also shows that the claimant was informed of the policy of test results by certified letter, return requested and informed of his right to have a confirmation test performed.

Based upon the evidence in the record and the application of the appropriate law, the administrative law judge concludes that Mr. Seymoure was discharged under disqualifying conditions. The claimant violated established company policy by having identifiable traces of a controlled substance in his system.

Although the administrative law judge is cognizant that Mr. Seymoure maintains that his positive test result were caused by another unidentified individual slipping a controlled substance into his food or drink, the administrative law judge finds that this theory strains credibility as the individuals who initially reported Mr. Seymoure’s suspicious activity were not any of the individuals identified by Mr. Seymoure as having a reason for doing so.

Because the employer has complied with the Iowa law in testing, the positive test result disqualifies Mr. Seymoure from receiving unemployment insurance benefits.

DECISION:

The representative’s decision dated November 19, 2010, reference 02, is affirmed. The claimant is disqualified. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount and meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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