IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

RENEE M CHAMPION
Claimant

PER MAR SECURITY & RESEARCH CORP
Employer

APPEAL NO. 07A-UI-02851-DWT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 02/11/07 R: 04
Claimant: Appellant (2)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Renee M. Champion (claimant) appealed a representative's March 12, 2007 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits, and the account of Per Mar Security & Research Corporation (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 April 5, 2007. The claimant participated in the hearing. The employer failed to respond to the hearing notice by contacting the Appeals Section prior to the hearing and providing the phone number at which the employer's representative/witness could be contacted to participate at the hearing. As a result, no one represented the employer.

After the hearing had been closed and the claimant had been excused, the employer contacted the Appeals Section. The employer made a request to reopen the hearing. Based on the employer's request to reopen the hearing, 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.

ISSUES:

Is there good cause to reopen the hearing?

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

FINDINGS OF FACT:

The claimant started working for the employer on June 5, 2006. The claimant worked as a full-time cash application specialist. The claimant received a copy of the employer's drug policy when she began working for the employer. The claimant understood that if the employer had reasonable suspicion an employee was under the influence of drugs, the employer could ask the employee to submit to a drug test. The claimant did not know what would happen if the test was positive.

On February 8, 2007, the employer asked the claimant to submit to a drug test. The employer did not indicate why the claimant was asked to submit to the drug test. The claimant provided a urine sample that the employer tested at the workplace. A human resource representative, Tina Hollingsworth, used a "home kit" to test for drugs. The employer tried the test two times and the results were positive. The employer told the claimant she had to leave work and would have to wait for the results of the drug test from the lab. The employer sent the claimant's sample to a laboratory.

On February 9, the claimant called the employer to find out what she needed to do. The employer told her she needed to wait until the results of the drug test were received, but she should also turn in her badge and key on Monday. The claimant did as she was instructed. When the claimant did not receive any results or anymore information from the employer, she filed a claim for unemployment insurance benefits.

No one from the laboratory contacted the claimant about the results of the drug test. The claimant did not receive any letter from the employer indicating she could at her expense have a split sample of the sample she gave tested at a laboratory of her choice.

The employer contacted the Appeals Section on April 5 at 10:30 a.m. for a 10:00 a.m. hearing. The employer did not have a control number. No one on the employer's behalf, called the Appeals Section prior to the scheduled 10:00 a.m. hearing to provide the name(s) of the employer's witnesses or the phone number at which the employer's witness(es) could be contacted. The employer requested that the hearing be reopened.

REASONING AND CONCLUSIONS OF LAW:

If a party responds to a hearing notice after the record has been closed and the party who participated at the hearing is no longer on the line, the administrative law judge can only ask why the party responded late to the hearing notice. If the party establishes good cause for responding late, the hearing shall be reopened. The rule specifically states that failure to read or follow the instructions on the hearing notice does not constitute good cause to reopen the hearing. 871 IAC 26.14(7)(b) and (c). Even though the employer intended to participate in the hearing, the facts do not establish good cause to reopen the hearing. Therefore, the employer's request to reopen the hearing is denied.

A claimant is not qualified to receive unemployment insurance benefits if she voluntarily quits employment without good cause, or an employer discharges her for reasons constituting work connected misconduct. Iowa Code §§ 96.5-1, 2-a. The facts do not establish that the claimant quit her employment. Instead, the employer suspended the claimant on February 8, told her to turn in her keys and badge on February 12 and then wait for the results of her drug test. The employer's failure to notify the claimant about the results of the drug test from the laboratory, in conjunction with suspending the claimant on February 8, indicates the employer initiated the employment separation.

It is well established that the employer has the burden to prove disqualifying misconduct. Iowa Code § 96.6-2. In Eaton v. Iowa Employment Appeal Board, 602 N.W.2d 553 (Iowa 1999), the Iowa Supreme Court determined that in order for a positive drug test to be misconduct sufficient to disqualify someone from unemployment insurance benefits, the drug test had to meet the requirements of the Iowa Drug Testing Law at Iowa Code § 730.5 and that such drug tests would be scrutinized carefully to see that the drug test complied with Iowa law. This decision was expanded by Harrison v. Employment Appeal Board and Victor Plastics, Inc., 659 N.W.2d 581 (Iowa 2003). In that decision, the Iowa Supreme Court determined that written notice of a

positive drug test must be made by certified mail return receipt and the notice must inform the employee of the right to have a second confirmatory test done at a laboratory of the employee's choice and it must tell the employee what the cost of that test will be. The Court further required that an employee be informed that the employee had seven days to request a second test or confirmatory test.

The evidence establishes the employer did not follow Iowa's drug testing laws at Iowa Code § 730.5. As a result, even if the laboratory concluded the claimant had a positive drug test, the employer's failure to follow the law cannot be used to establish that the claimant committed work-connected misconduct. Therefore, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The employer's request to reopen the hearing is denied. The representative's March 12, 2007 decision (reference 01) is reversed. The claimant did not voluntarily quit her employment. Instead, the employer suspended and then discharged the claimant for reasons that do not constitute work-connected misconduct. As of February 11, 2007, the claimant is qualified to receive unemployment insurance benefits, provided she meets all other eligibility requirements. The employer's account may be charged for benefit paid to the claimant.

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Debra L. Wise
Administrative Law Judge

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Decision Dated and Mailed

dlw/css