

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JESUS LOPEZ**  
Claimant

**APPEAL NO: 12A-UI-06073-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**LENNOX INDUSTRIES INC**  
Employer

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

Iowa Code § 96.5(2)(a) - Discharge for Misconduct

**STATEMENT OF THE CASE:**

Jesus Lopez (claimant) appealed an unemployment insurance decision dated May 4, 2012, reference 01, which held that he was not eligible for unemployment insurance benefits because he was discharged from Lennox Industries, Inc. (employer) for work-related misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 19, 2012. The claimant participated in the hearing. The employer participated through Brent McDowell, Labor Relations Coordinator. Employer's Exhibits One and Two were admitted into evidence. Based on 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.

**ISSUE:**

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

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a full-time assembler from February 12, 2010 through April 13, 2012 when he was discharged for violation of company policy. Work Rule #16 prohibits the "use or possessing of controlled substances or alcoholic beverages within the plan or on company property at any time." Violation of this policy results in immediate termination and the claimant was aware of this rule.

Drug paraphernalia was observed in the claimant's car on April 12, 2012 by a supervisor who then called the security guard to confirm it. At approximately 6:30 p.m., the security guard contacted Brent McDowell, Labor Relations Coordinator, who directed him to contact the local authorities. Mr. McDowell arrived at the work site when the police were searching the claimant's car. The police found marijuana and drug paraphernalia in the claimant's car and charged him with possession of a controlled substance and possession of drug paraphernalia.

The employer prepared and sent the claimant a letter dated April 13, 2012 which advised him he was discharged for violation of company property. The claimant made an initial court appearance on April 20, 2012 for possession of a Schedule I controlled substance charge and possession of drug paraphernalia charge. The preliminary hearing was scheduled for May 7, 2012 but no further information was provided by the employer.

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

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a.

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 employer has the burden to prove the discharged employee is disqualified for benefits due to work-related misconduct. *Sallis v. Employment Appeal Bd.*, 437 N.W.2d 895, 896 (Iowa 1989). The claimant was discharged on April 13, 2012 for violating company policy by possessing marijuana and drug paraphernalia in his vehicle on company property. He feels he was discriminated against and does not understand why an employee under the influence of drugs or alcohol gets a second chance. The claimant knowingly violated company policy and state law by possession of drugs and drug paraphernalia in his vehicle which was on company property. There was no discrimination. The claimant's conduct shows a willful or wanton

disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

**DECISION:**

The unemployment insurance decision dated May 4, 2012, reference 01, is affirmed. The claimant is not eligible to receive unemployment insurance benefits because he was discharged from work for misconduct. Benefits are withheld until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

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Susan D. Ackerman  
Administrative Law Judge

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Decision Dated and Mailed

sda/pjs