IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

HOWARD T WALKER
Claimant

TEAM STAFFING SOLUTIONS INC
Employer

APPEAL NO: 12A-UI-09476-D

ADMINISTRATIVE LAW JUDGE DECISION

OC: 07/15/12
Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Howard T. Walker (claimant) appealed a representative's August 3, 2012 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment from Team Staffing Solutions, Inc. (employer). After hearing notices were mailed to the parties' last known addresses of record, a telephone hearing was held on November 7, 2012. The claimant participated in the hearing. Sarah Fiedler appeared on the employer's behalf and presented testimony from one other witness, Kala Anderson. During the hearing, Employer's Exhibits One, Two and Three, and Claimant's Exhibits A and B were entered 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:

Was the claimant discharged for work-connected misconduct?

OUTCOME:

Affirmed. Benefits denied.

FINDINGS OF FACT:

The claimant started working for the employer on June 21, 2010. He worked full time as an assembler on the second shift at the employer's Burlington, Iowa business client. His last day of work was July 14, 2012. The employer discharged him on that date, confirmed by a letter on July 18, 2012. The stated reason for the discharge was violation of the employer's alcohol and drug policy.

The employer's policy prohibits an employee from reporting to work under the influence of alcohol or upon testing shows a breath alcohol level of .04 or higher. The policy also provides for reasonable suspicion testing. At shift start up on July 14 other employees reported to the business client's supervisor at about 1:30 p.m. that the claimant had been argumentative and smelled of alcohol. The supervisor, who had been through certified substance abuse training,

spoke with the claimant and also concluded that he smelled of alcohol. This supervisor contacted the employer's on-site supervisor, Anderson, at about 1:45 p.m. to report her concerns and to ask her to come to the site so that the claimant could be sent for testing.

When Anderson arrived she also smelled alcohol on the claimant's person. He told her he had consumed alcohol very early that morning. She summoned a taxi, which at about 2:10 p.m. took the claimant to the testing facility, arriving at about 2:25 p.m.

Upon arriving at the medical facility the claimant submitted to a breath alcohol test. There were two test breaths, one at 3:13 p.m. and the second at 3:36 p.m. The first test registered as .117, the second registered as .137. The claimant submitted some information indicating that he did take some prescription and over the counter medication for tooth problems, and at least some of the over the counter medication contained alcohol.

REASONING AND CONCLUSIONS OF LAW:

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. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982); Iowa Code § 96.5-2-a.

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445 (Iowa 1979); *Henry v. Iowa Department of Job Service*, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. 871 IAC 24.32(1)a; *Huntoon*, supra; *Henry*, supra. In contrast, 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. 871 IAC 24.32(1)a; *Huntoon*, supra; *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984).

The employer discharged the claimant for a violation of its drug and alcohol policy. In order for a violation of an employer's drug or alcohol policy to be disqualifying misconduct, it must be based on a drug test performed in compliance with Iowa's drug testing laws. *Eaton v. Iowa Employment Appeal Board*, 602 N.W.2d 553, 558 (Iowa 1999). The employer demonstrated that it has complied with the drug testing regulations policies. The claimant has not established that the results of the test were invalid, or that his medication condition altered the validity of the test. The claimant's violation of the policy 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. The employer discharged the claimant for reasons amounting to work-connected misconduct.

DECISION:

The representative's August 3, 2012 decision (reference 01) is affirmed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of July 14, 2012. This disqualification continues until the claimant has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged.

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Lynette A. F. Donner
Administrative Law Judge

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Decision Dated and Mailed

ld/pjs