

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

GARY ESTABROOK
Claimant

THE HON COMPANY
Employer

APPEAL NO. 14A-UI-04059-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 03/23/14
Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

Gary Estabrook (claimant) appealed an unemployment insurance decision dated April 10, 2014, (reference 01), which held that he was not eligible for unemployment insurance benefits because he was discharged from The Hon Company (employer) for work-related misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 16, 2014. The claimant participated in the hearing. The employer participated through MCR Business Partner Holly Fischer, MCR Representative Brooke Sweeney and Employer Representative Sam Krauss. Employer's Exhibits One through Six were admitted into evidence.

ISSUE:

The issue is whether the employer discharged the claimant for work-related misconduct.

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 full-time from August 6, 1984, through March 21, 2014, when he was discharged for a second positive drug test. The employer has a written drug policy that informs employees of the drug testing procedures and for which drugs the employer will be testing. The claimant was chosen on a random basis by an independent third party for a drug test performed on January 26, 2010. He tested positive for marijuana and the medical review officer notified him on February 1, 2010. The employer was notified and subsequently sent the claimant written notification on that same day. In addition to notifying him of the positive result, the written notification advised him of his right to have his sample reevaluated by a lab of his choosing. The claimant did not proceed with a re-evaluation of his sample and the employer offered him the opportunity to enroll in a substance abuse evaluation and treatment program. The claimant completed the program and continued his employment.

The employer's Drug and Alcohol Free Workplace policy provides that a second positive test will result in the employee's termination. The claimant was selected for a random drug test on February 25, 2014, and the employer received notification on March 13, 2014, that he again tested positive for marijuana. Written notification was sent to the claimant on March 13, 2014,

advising him of his right to have his sample re-evaluated within seven calendar days. The claimant admitted using a small amount of marijuana. The employer was initially unaware that this was the claimant's second positive drug test and sent him to treatment. However, when his records were reviewed and it was discovered this was his second positive drug test, he was sent a termination letter.

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 him for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. It is the employer's burden to prove the discharged employee is disqualified for benefits for misconduct. *Sallis v. Employment Appeal Bd.*, 437 N.W.2d 895, 896 (Iowa 1989).

Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duties and obligations to the employer. See 871 IAC 24.32(1). The claimant was discharged for a second violation of the employer's drug and alcohol policy due to testing positive for marijuana. Iowa Code § 730.5 sets forth the rules by which a private company may screen its employees for use of illegal drugs. The employer has a written drug testing policy per Iowa Code § 730.5(9)(b) and tested the claimant on a random basis. A medical review officer reviewed and interpreted the confirmed positive test result and notified the claimant of the positive results before reporting the results to the employer; Iowa Code § 730.5(7)(g). The claimant was sent written notification of his positive results and given the opportunity to have his samples re-evaluated by a different lab. Iowa Code § 730.5(7)(i)(1) and (2). The first positive test resulted in substance abuse treatment and the second positive test resulted in his termination.

The employer has met the requirements of Iowa Code § 730.5. 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 April 10, 2014, (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.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/pjs