

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SAMANTHA N SPEAS**  
Claimant

**APPEAL NO. 07A-UI-06346-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**GOOD SAMARITAN SOCIETY INC**  
Employer

**OC: 05/27/07 R: 03**  
**Claimant: Respondent (1)**

Section 96.5-2-a - Discharge

**STATEMENT OF THE CASE:**

The employer appealed an unemployment insurance decision dated June 14, 2007, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on July 12, 2007. The parties were properly notified about the hearing. The claimant failed to participate in the hearing. Fred Metcalf participated in the hearing on behalf of the employer. Exhibit One was admitted into evidence at the hearing.

**ISSUE:**

Was the claimant discharged for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant worked for the employer as a certified nursing assistant from June 26, 2006, to May 31, 2007. The claimant was informed and understood that under the employer's work rules, employees were required to submit to a drug test under certain circumstances, including when an employee is reasonably believed to be using a controlled substance, and were subject to termination if they tested positive for drugs.

Pursuant to the policy, the claimant was required to submit to a drug test on May 23, 2007. A urine sample was taken from the claimant and analyzed using an initial drug screen test and subsequent confirmatory test by a certified laboratory. The analysis disclosed the presence of drugs in the claimant's system at a level which would demonstrate the claimant had used illegal drugs in violation of the employer's policy. The claimant was discharged by the employer on May 31, 2007, after it received the results of the drug test.

The employer did not notify the claimant in writing by certified mail, return receipt requested, of the results of the test and her right under Iowa Code section 730.5-7-i to have the split sample of her collected urine tested. This violated the employer's own policy.

## REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant 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 on 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. Employment Appeal Board, 602 N.W.2d 553, 558 (Iowa 1999). As 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 an employee from unemployment compensation benefits." Eaton, 602 N.W.2d at 558.

In this case, the employer violated its own policy and Iowa Code section 730.5-7-i by failing to notify the claimant in writing by certified mail, return receipt requested, of the results of the test and her right to have the split sample of her collected urine tested at her request. The precedent of Eaton v. Employment Appeal Board clearly applies to this case since it also involved an employer's failure to comply with Iowa Code section 730.5-7-i, and the claimant is, therefore, not disqualified from receiving unemployment insurance benefits.

**DECISION:**

The unemployment insurance decision dated June 14, 2007, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

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Steven A. Wise  
Administrative Law Judge

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Decision Dated and Mailed

saw/css