

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

JENNIFER R LOERA
Claimant

APPEAL NO. 16A-UI-12600-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

POLARIS INDUSTRIES INC
Employer

OC: 12/27/15
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated November 21, 2016, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on December 13, 2016. Claimant participated personally. Employer participated by Brad Jones and Penny Ashland. Claimant Exhibits 1-2 and Claimant's exhibits B-H were admitted into evidence. (The administrative law judge wishes to make special note the claimant sent in additional exhibits on the morning of the hearing that were received by the Appeals Bureau, but not downloaded or forwarded to the administrative law judge for the hearing, and thus were not considered.)

ISSUE:

The issue in this matter is whether claimant was discharged for misconduct?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on October 13, 2016. Employer discharged claimant on November 1, 2016 because claimant tested positive on a drug test following reasonable suspicion of unusual activity by claimant on October 13, 2016.

Employer stated that claimant was displaying unusual actions on October 13, 2016. Claimant had to go outside multiple times to get fresh air and was not focusing on her work. Said unusual actions brought about reasonable suspicion on the part of employer that claimant might be on controlled substances. A coworker told claimant's supervisor of claimant's actions, and claimant and the supervisor brought the information to the company nurse. Claimant was called in to have a urinalysis test conducted. Claimant had a positive result as to the test and was walked to the lobby of the building so she could be taken home. Employer had split the sample and sent off to a portion to an outside lab for confirmation. The laboratory confirmed that claimant's UA was positive for marijuana and amphetamines.

Employer wrote a letter to claimant on October 19, 2016 informing claimant of the confirmed positive test and of claimant's right to independent testing. (Employer's ex. 1). The letter was sent certified mail and signed for by a member of claimant's family on October 22, 2016. The letter indicated the steps to take to have an independent test done on the urine dropped.

Claimant stated she did not receive the certified letter and further stated that her twelve year old daughter signed for it. Claimant stated that the first time she got this letter was well after she'd been terminated. Claimant stated that she was in the hospital at the time her daughter signed for the certified letter. Claimant further stated that she was having hemoglobin problems on October 13, 2106 and that led to her acting strangely, and that she'd been taking Adderal, and that led to her positive test for amphetamines. Claimant did not explain the positive test for marijuana.

As claimant did not timely contest employer's testing, she was terminated from her job on November 1, 2016.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 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.

Iowa Admin. Code r. 871-24.32(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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

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. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982), Iowa Code § 96.5-2-a.

In order to establish misconduct 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. Rule 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 Ct. 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 the employee's duties and obligations to the employer. Rule 871 IAC 24.32(1)a; *Huntoon supra*; *Henry supra*.

Drug testing is statutorily guided in Iowa by Iowa Code § 730.5. In many cases, the administrative law judge is asked to determine whether an employer substantially complied with the provisions of Iowa Code § 730.5. That is not the case in this matter. Here, not only did employer provide the company's testing procedures to claimant, conduct a split test, and send off the test for confirmatory testing on its own, but also did send by certified mail the results and the statement that claimant could, within time restrictions, get an independent test done. The main question left here is whether another person in claimant's family having signed for the certified document is satisfactory. The administrative law judge deems it to be. The focus of the law in on the employer's providing proper notice. Here the employer provided that proper notice. It cannot be held incumbent on the employer to somehow make sure a proper party has signed for the document when a third party (USPS) delivers the certified letter. Employer did all that could be expected in this matter.

In this matter, the evidence established that claimant was discharged for an act of misconduct when claimant violated employer's policy concerning a failed drug test. The last incident, which brought about the discharge, constitutes misconduct because claimant had actions which caused reasonable suspicion, failed a test, and was properly alerted of the failure of the test and her options. The administrative law judge holds that claimant was discharged for an act of misconduct and, as such, is disqualified for the receipt of unemployment insurance benefits.

DECISION:

The decision of the representative dated November 21, 2016, reference 01, is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

Blair A. Bennett
Administrative Law Judge

Decision Dated and Mailed

bab/rvs