IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

RONALD G HUDSON
Claimant

PER MAR SECURITY & RESEARCH CORP
Employer

APPEAL NO: 11A-UI-13962-DT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 09/11/11
Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Ronald G. Hudson (claimant) appealed a representative's October 14, 2011 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment from Per Mar Security & Research Corporation (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on November 16, 2011. The claimant failed to respond to the hearing notice and provide a telephone number at which he could be reached for the hearing and did not participate in the hearing. Wendy Larison appeared on the employer's behalf and presented testimony from one other witness, Michael Lancaster. During the hearing, Employer's Exhibits One through Four were entered into evidence. Based on the evidence, the arguments of the employer, 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?

FINDINGS OF FACT:

The claimant started working for the employer on April 1, 2005. He worked full-time as a security officer at the employer's Cedar Rapids, Iowa, business client, working on the second shift. The last day he reported for work was September 3, 2011. The employer discharged him on September 14, 2011. The stated reason for the discharge was violation of the employer's drug policy.

The employer has a written drug testing policy of which the claimant was on notice. That policy provides for post-accident drug testing. While getting a vehicle on September 3, the claimant was in an accident. As a result, he was required to submit to drug testing. A split portion sample was obtained from the claimant. An initial screen indicated the sample was positive for

marijuana. As a result, the claimant was put off work pending the results of the confirmation testing. On September 13, the employer's medical review officer reported back that the sample had been confirmed positive for marijuana. As a result, on September 14 the employer sent the claimant a letter advising him of the confirmed results and of his right to have the split portion of the sample tested at a facility of his choice at his own cost if he so requested within seven days, but otherwise advising him that his employment was considered terminated. The claimant did not respond to the letter and did not request testing of the split portion of the sample.

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 that 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 that 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).

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 Eaton court said, "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. The employer complied with the drug testing regulations and its own policies. A preponderance of the evidence establishes the claimant violated the employer's drug policy. The claimant's violation of that 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 October 14, 2011 decision (reference 01) is affirmed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of September 3, 2011. 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/kjw