

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

KENNETH C LYONS
208 LINDALE AVE
WATERLOO IA 50703

EXPRESS SERVICES INC
PO BOX 720660
OKLAHOMA CITY OK 73172

Appeal Number: 06O-UI-06059-H2T
OC: 02-19-06 R: 03
Claimant: Respondent (2)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a – Discharge/Misconduct
Section 96.3-7 - Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the March 22, 2006, reference 03, decision that allowed benefits. After due notice was issued, a hearing was held on April 18, 2006. The claimant did participate. The employer did participate through Kim Jenison, Staffing Consultant. A decision was issued on April 21, 2006. The claimant appealed to the Employment Appeal Board and the case was remanded by the Board for further testimony. Additional testimony was taken on June 29, 2006. The claimant did not participate. The employer did participate through Deborah Beighley, Owner. Employer's Exhibit One was received.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The findings of fact set out in 06A-UI-03522-H2T are incorporated by reference as if fully set out herein. The employer's drug policy requires that employees not use drugs at all, whether they are at work or not. The claimant was tested only because he sustained a work-related injury.

REASONING AND CONCLUSIONS OF LAW:

The reasoning and conclusions of law as set out in appeal number 06A-UI-03522-H2T are adopted and incorporated as if set out herein. Additionally, the administrative law judge concludes that the claimant's admission alone of drug use before reporting to work, where a subsequent test confirmed his use of methamphetamines, is enough to establish misconduct. This is true even if the employer did not follow the strictures of Iowa code 730.50. The purpose of the statute is in part to establish the authenticity of the drug test. Here the claimant has admitted on the record under oath that he took methamphetamines, an illegal drug, and had the same illegal drug in his system when he reported for work and the drug test. The administrative law judge is not relying on the drug test to establish the misconduct, but rather on the claimant's own admission of an illegal act, that is in and of itself misconduct. The claimant's admission alone is enough to establish misconduct and to disqualify him from receiving unemployment insurance benefits.

DECISION:

The March 22, 2006, reference 03, decision is reversed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid ages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The claimant is overpaid benefits in the amount of \$1,600.00.

tkh/pjs