

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANDREW M NOVAK
Claimant

APPEAL NO. 09A-UI-10924-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

**Original Claim: 06/21/09
Claimant: Respondent (2)**

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated July 16, 2009, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on August 17, 2009. The parties were properly notified about the hearing. The claimant participated in the hearing. Amy Watzek participated in the hearing on behalf of the employer. Exhibits One and Two were 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 technician in the tire shop from February 2008 to May 22, 2009. The claimant was informed and understood that under the employer's work rules, the use, possession, sale, transfer, acceptance, solicitation, or purchase of illegal drugs at any time was strictly prohibited and employees were subject to drug testing after a work-related accident.

On May 22, 2009, the claimant injured his hand when he shut it in a car door during work hours. This triggered a drug test, but before the confirmed drug test results came back, the claimant admitted to two managers that he had smoked marijuana the night before the accident.

The employer discharged the claimant for violating the employer's policy prohibiting employees from using illegal drugs at any time.

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.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or

omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent, or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

Although the claimant was tested for drugs, the employer did not base its decision on the drug test results but instead based the decision on his admission of using illegal drugs in violation of the employer's policies. Therefore, the requirements of the Harrison v. Employment Appeal Board, 659 N.W.2d 581 (Iowa 2003); and Eaton v. Employment Appeal Board, 602 N.W.2d 553, 558 (Iowa 1999) cases that drug testing be in compliance with Iowa's drug testing laws do not apply to this case.

The claimant's violation of a known work rule was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. Work-connected misconduct as defined by the unemployment insurance law has been established in this case.

DECISION:

The unemployment insurance decision dated July 16, 2009, reference 01, is reversed. The claimant is disqualified from receiving unemployment insurance benefits until he has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/kjw