BEFORE THE
EMPLOYMENT APPEAL BOARD
Lucas State Office Building
Fourth floor
Des Moines, Iowa 50319

DAVID L RANSHAW	:	
	:	**HEARING NUMBER:** 14B-UI-02451
Claimant,	:	
	:	
and	:	**EMPLOYMENT APPEAL BOARD DECISION**
	:	
ATC INC	:	
Employer.		

N O T I C E

THIS DECISION BECOMES FINAL unless (1) a **request for a REHEARING** is filed with the Employment Appeal Board within **20 days** of the date of the Board's decision or, (2) a **PETITION TO DISTRICT COURT** IS FILED WITHIN **30 days** of the date of the Board's decision.

A REHEARING REQUEST shall state the specific grounds and relief sought. If the rehearing request is denied, a petition may be filed in **DISTRICT COURT** within **30 days** of the date of the denial.

SECTION: 96.5-2-A

D E C I S I O N

UNEMPLOYMENT BENEFITS ARE DENIED

The Employer appealed this case to the Employment Appeal Board. Two members of the Employment Appeal Board reviewed the entire record. The Appeal Board finds it cannot affirm the administrative law judge's decision. The Employment Appeal Board **REVERSES** as set forth below.

FINDINGS OF FACT:

The Claimant, David L. Ranshaw, worked for ATC, Inc. from January 26, 2010 through January 31, 2014 as a full-time truck mechanic. (18:35-18:14; 10:18-10:04) The Employer has a zero-tolerance policy toward drug usage, which is set forth in a separate written statement that the Claimant signed at the start of his employment. (11:13-11:05; Exhibit 1, unnumbered p. 2)

The Claimant had two accidents for which the Employer issued no prior disciplinary action against him. (8:06-7:53) On January 31, 2014, the Claimant was involved in an accident while driving a forklift when he damaged a partially closed overhead door as he pulled out of the wash bay, costing $1225 in damages. (18:08-17:13, 9:59-9:16; Exhibit 1, unnumbered p. 3) When damage exceeds $500, an employee is subject to a drug screen test according to the Employer's policy. (17:43; 16:59-16:52; 14:35-13:27, 8:25-8:00;

Exhibit 1, unnumbered p. 1) The Claimant took a urine specimen test at Medtox Laboratories at about 11:19 a.m., on the 31st. His urine sample was below 90 degrees, which precluded the lab from obtaining an accurate result. (16:31-16:19; 7:45; Exhibit 1, unnumbered p. 4) The lab attempted to take two additional tests within the next few hours, but was unsuccessful. (16:20-15:58) The drug test came back as 'inconclusive' because the Claimant was unable to provide an accurate sample after two attempts. (16:48-16:42)

REASONING AND CONCLUSIONS OF LAW:

Iowa Code Section 96.5(2)(a) (2013) provides:

> *Discharge for Misconduct*. If the department finds the individual has been discharged for misconduct in connection with the individual's employment:
>
> The individual shall be disqualified for benefits until the individual has worked in and been paid wages for the insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

The Division of Job Service defines misconduct at 871 IAC 24.32(1)(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 the 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 accepted this definition as reflecting the intent of the legislature. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665, (Iowa 2000) (quoting Reigelsberger v. Employment Appeal Board, 500 N.W.2d 64, 66 (Iowa 1993).

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 NW2d 661 (Iowa 2000).

The findings of fact show how we have resolved the disputed factual issues in this case. We have carefully weighed the credibility of the witnesses and the reliability of the evidence. We attribute more weight to the Employer's version of events. Both parties agree that Mr. Ranshaw was responsible for the accident that took place on January 31st while the Claimant was operating a forklift. That accident precipitated the Claimant being subjected to a drug test, which he alleges he never had to do in the past considering he was involved in a couple of other accidents. In light of his testimony, we find that the Employer was not unreasonable and, in fact, was justified based on their policy in requiring him to take a drug test in this instance, particularly given his past accidents.

Although Mr. Ranshaw denied that he admitted using meth on the 31st, he admitted to using the drug in the past. He did not specifically deny having knowledge of or that the Employer had a personnel handbook or drug policy, he merely denied that he ever saw any parts of it or the drug policy statement. Yet, the employer furnished a copy of that policy statement which he signed towards the beginning of his employment. This policy requires employees to submit to drug testing upon reasonable request by the Employer. In weighing the Employer's testimony regarding his admission, coupled with the documentation to support that testimony, we conclude that the Claimant's equivocal testimony overall was simply not credible. Based on this record, we conclude that the Employer satisfied their burden of proof.

DECISION:

The administrative law judge's decision dated March 26, 2014 is **REVERSED**. The Employment Appeal Board concludes that the Claimant was discharged for disqualifying misconduct. Accordingly, he is denied benefits until such time he has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. See, Iowa Code section 96.5(2)"a".

Because the Claimant has received two consecutive agency decisions that allowed benefits, the Claimant is now subject to the double affirmance rule.

Iowa Code section 96.6(2) (2007) provides, in pertinent part:

> ...If an administrative law judge affirms a decision of the representative, or the appeal board affirms a decision of the administrative law judge allowing benefits, the benefits shall be paid regardless of any appeal which is thereafter taken, but if the decision in finally reversed, no employer's account shall be charged with benefits so paid and this relief from charges shall apply to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5…

The rule itself specifies:

> Rule of two affirmances.
>
> a. Whenever an administrative law judge affirms a decision of the representative or the employment appeal board of the Iowa department of inspections and appeals affirms the decision of an administrative law judge, allowing payment of benefits, such benefits shall be paid regardless of any further appeal.
>
> b. However, if the decision is subsequently reversed by higher authority:
>
> (1) The protesting employer involved shall have all charges removed for all payments made on such claim.
> (2) All payments to the claimant will cease as of the date of the reversed decision unless the claimant is otherwise eligible.
> (3) No overpayment shall accrue to the claimant because of payment made prior to the reversal of the decision.

In other words, as to the Claimant, even though this decision disqualifies the Claimant for receiving benefits, those benefits already received shall ***not*** result in an overpayment.

Lastly, a portion of the Employer's appeal to the Employment Appeal Board consisted of additional evidence which was not contained in the administrative file and which was not submitted to the administrative law judge. While the appeal and additional evidence were reviewed, the Employment Appeal Board, in its discretion, finds that the admission of the additional evidence is not warranted in reaching today's decision.

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Kim D. Schmett

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Cloyd (Robby) Robinson

AMG/fnv