

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JEFFERSON HOWE
Claimant

BRIDGESTONE AMERICAS TIRE
Employer

APPEAL 17A-UI-07580-DL-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 06/25/17
Claimant: Appellant (1)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 730.5 – Private Sector Drug-free Workplaces

STATEMENT OF THE CASE:

The claimant filed an appeal from the July 17, 2017, (reference 01) unemployment insurance decision that denied benefits based upon a discharge from employment. The parties were properly notified about the hearing. A telephone hearing was held on August 11, 2017. Claimant participated. Employer participated through human resource section manager Tom Barragan. Claimant did not receive the employer's proposed exhibits so they were not admitted to the record.

ISSUE:

Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a full-time production worker from 2013, through May 11, 2017. His last day of work was May 2, 2017. Claimant received the employer's drug and alcohol testing policy at hire. In February 2015, claimant had a positive test for marijuana metabolite and was placed in the employer's drug-free workplace program that requires random follow-up testing for six years. The policy calls for termination of employment upon a second positive test. Five employees are randomly selected each month for testing. On May 2 claimant was randomly selected for testing and submitted to a urine test at the employer's medical department. The cup sample resulted in an instant positive for marijuana so claimant was suspended pending testing by certified laboratory Clinical Reference Laboratory (CRL) in Lenexa, Kansas. Certified test results were also positive for marijuana metabolite. The employer's company doctor and medical review officer (MRO) Todd Troll met with claimant in person on May 8, 2017, to give him notice of the test result and the opportunity to have a split sample test done at his expense. Claimant opted not to do so because his car was not working. The written test results were also mailed to claimant's home.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

Iowa Code section 96.5(2)a provides:

Causes for disqualification.

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. *Reigelsberger v. Emp't Appeal Bd.*, 500 N.W.2d 64, 66 (Iowa 1993); accord *Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661, 665 (Iowa 2000).

The employer has the burden of proving disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). Whether an employee violated an employer's policies is a different issue from whether the employee is disqualified for misconduct for purposes of unemployment insurance benefits. See *Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661, 665 (Iowa 2000) ("Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of benefits." (Quoting *Reigelsberger*, 500 N.W.2d at 66.)).

Testing under Iowa Code section 730.5(4) allows employers to test employees for drugs and/or alcohol but requires the employer "adhere to the requirements . . . concerning the conduct of such testing and the use and disposition of the results." Iowa Code section 730.5(1)*i* allows drug testing of an employee upon "reasonable suspicion" that an employee's faculties are impaired on the job or on an unannounced random basis. It also allows testing as condition of continued employment or hiring. Iowa Code § 730.5(4). Testing shall include confirmation of initial positive test results. Iowa Code section 730.5(9) requires that a written drug screen policy be provided to every employee subject to testing.

The employer has met the requirements of Iowa Code section 730.5. The claimant did receive a copy of employer's drug and alcohol use policy, a certified testing facility confirmed that the in-house random sample urine drug screen was positive for marijuana, claimant was notified by a MRO and offered a split screen sample, and he did not request a second test of the split sample. Employees are required to be drug free in the workplace. The violation of the known work rule constitutes misconduct as it presents a safety hazard to the employee, coworkers and potential liability for the employer.

DECISION:

The July 17, 2017, (reference 01) unemployment insurance decision is affirmed. Claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/rvs