

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**STEVEN B CRAFT**  
Claimant

**CBE COMPANIES INC**  
Employer

**APPEAL 17A-UI-03020-JP-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 02/19/17**  
**Claimant: Appellant (2)**

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Iowa Code § 96.5(2)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the March 8, 2017, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on April 11, 2017. Claimant participated. Employer did not participate.

**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 full-time as a debt collector from August 2008, and was separated from employment on February 20, 2017, when he was discharged.

The employer has a written drug and alcohol use policy. Claimant was aware of the policy. Claimant testified the policy provides for testing for employees when they are hired. Claimant does not believe the testing provides for random testing.

Approximately a year and a half prior to his separation, claimant transferred from one client's account to another client's account and the employer did not require him to take a drug or alcohol test. Around February 13, 2017, the employer notified claimant that the employer was losing the client's account he was working on and he was going to be transferred to the Verizon account. The employer also notified claimant he would have to take a drug test on February 14, 2017 to transfer to the Verizon account.

On February 14, 2017, the employer came to take claimant to the drug test, but he had forgotten his wallet. Claimant told the employer that he had smoked marijuana around February 11 or 12, 2017. Claimant asked the employer if the test came back positive, would the employer work with him so he could keep his job. Claimant understood that his continued employment depended on the outcome of the drug test. Claimant was allowed to work for the employer the rest of the day.

On February 15, 2017, claimant submitted to a drug screen at Covenant Clinics in Cedar Falls, Iowa. Claimant provided a urine sample, but he does not believe the sample was split into two separate components.

The test result on February 20, 2017, was positive for marijuana. The employer did not provide the results to claimant by certified mail with return receipt. A doctor informed claimant by telephone on February 20, 2017 about the positive test. On February 20, 2017, claimant met with the employer and he was discharged due to the positive test. The employer did not offer claimant an opportunity for a second/confirmatory test.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason. Benefits are allowed.

Iowa Code § 96.5(2)a provides:

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. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proving disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). Iowa Code § 730.5 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). Iowa Code § 730.5(9) requires that a written drug screen policy be provided to every employee subject to testing. Iowa Code § 730.5(7)(i)(1) mandates that an employer, upon a confirmed positive drug or alcohol test by a certified laboratory, notify the employee of the test results by certified mail return receipt requested, and the right to obtain a confirmatory or split-sample test before taking disciplinary action against an employee.

In an at-will employment environment an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, it incurs potential liability for unemployment insurance benefits related to that separation. A violation is not necessarily disqualifying misconduct even if the employer was fully within its rights to impose discipline up to or including discharge for the incident under its policy. Although claimant admitted to using drugs prior to the test, no evidence was presented that the employer discharged him because of his admission. Claimant testified he made his admission to the employer on February 14, 2017, but the employer allowed him to work on February 14, 2017. The employer did not suspend or discharge him based off his admission. The employer discharged claimant based off a positive test result. While the employer certainly may have been within its rights to discharge claimant for failing a drug test, it failed to provide him with sufficient notice of the test results. The employer did not send a certified letter with return receipt requested of the test results to claimant as is required. Iowa Code § 730.5(7). The employer also did not provide claimant with an opportunity for a split sample test according to the strict and explicit statutory requirements. The Iowa Supreme Court has held that an employer may not “benefit from an unauthorized drug test by relying on it as a basis to disqualify an employee from unemployment compensation benefits.” *Eaton v. Iowa Emp’t Appeal Bd.*, 602 N.W.2d 553, 557, 558 (Iowa 1999). Thus, the employer cannot use the results of the drug screen as a basis for disqualification from benefits. Benefits are allowed.

**DECISION:**

The March 8, 2017, (reference 01) unemployment insurance decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided claimant is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

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Jeremy Peterson  
Administrative Law Judge

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Decision Dated and Mailed

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