

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SYLVESTER HAMILTON
Claimant

APPEAL NO. 08A-UI-01956-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

WENGER TRUCK LINES INC
Employer

**OC: 01-06-08 R: 12
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the February 22, 2008, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on March 12, 2008. The claimant did participate. The employer did participate through Ryle Roseke, Safety and Recruiting Manager.

ISSUE:

Was the claimant discharged for work-related misconduct?

FINDINGS OF FACT:

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was employed as an over-the-road driver full time beginning March 28, 2007 through November 16, 2007 when he was discharged.

The claimant was sent for a random drug test on November 12 which was positive for cocaine. The claimant was notified of the results by the MRO and was given an opportunity to offer an explanation. The claimant later offered that he thought one of his drinks at a party had been spiked. The employer followed their own policy and complied with the DOT regulations.

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:

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.

871 IAC 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.

The Federal Motor Carrier Safety Act (FMCSA) generally provides:

49 CFR 382.411 requires that the employer notify the employee of the test results and, if positive, which controlled substance was present.

Section 382.501 requires the employer or designated employer representative (DER) to remove the driver from performing safety-sensitive functions.

Section 382.601 The employer is required to develop a policy about the misuse of alcohol and controlled substances and provide proof of employee receipt.

49 CFR 40.15 allows for the use of a service agent, such as a medical review officer (MRO) to act on behalf of the employer to meet DOT testing requirements.

Section 40.131 requires the employer or MRO to speak directly to the employee about the test result.

Section 40.137 The MRO must offer the employee a chance to provide a legitimate medical explanation for the positive test result.

Section 40.153 The MRO must notify the employee of the right to a split specimen test at their cost and how to obtain that test. See also, 49 CFR 40.171.

Section 40.163 The MRO must report the initial and split test results, if any, to the employer and employee. See also, 49 CFR 40.187.

The employer has met the requirements of the FMCSA. The administrative law judge is not persuaded that the claimant unknowingly ingested cocaine. The claimant's drug screen was

positive and claimant did not request a split sample test. The claimant is required to be drug free in the workplace. The violation of the known work rule and DOT regulations constitutes misconduct as it presents a safety hazard to the employee and the general public and potential liability for the employer. Benefits are denied.

DECISION:

The February 22, 2008, reference 01, decision is affirmed. 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 wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/css