

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CLAIMANT

APPEAL NO: 12A-UI-14142-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

EMPLOYER

**OC: 10/28/12
Claimant: Appellant (1)**

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's November 19, 2012 determination (reference 02) that disqualified him from receiving benefits and held the employer's account exempt from charge because the claimant had been discharged for disqualifying reasons. Both the claimant and employer participated in the hearing.

The reasoning and conclusions of law section of this decision explain my decision regarding the confidentiality issue involving federal drug testing information. By my signature on this decision, I stipulate that the drug test information submitted in this case will only be made available to the parties to this proceeding.

Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is not qualified to receive benefits.

ISSUE:

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked for the employer as a full-time truck driver from August 18, 2011, to October 16, 2012. The claimant received a copy of the employer's drug policy when he started his employment. The employer annually reviews its drug and alcohol policy with employees. The claimant understood that under the employer's written drug-testing policy and federal department of transportation regulations, drivers were required to submit to random drug testing and were subject to termination if they tested positive for illegal drugs.

The employer asked the claimant and other drivers to submit to a random drug test on October 6, 2012. The claimant provided a urine sample and saw a nurse split his sample and then seal the containers. On October 10, the claimant learned he had a positive test for THC. He requested that the split sample be tested. This was done and the second test also indicated the claimant had a positive test for THC. The employer's policy states that anything THC result over 50 is considered a positive drug test. The claimant's THC reading was 54.

When a medical review officer talked to the claimant about his test result, the claimant was not on any prescription medications that could result in a positive test. The claimant denied using marijuana and was unaware that he had been around anyone who smoked marijuana.

When the employer learned on October 19 that the claimant's split sample was positive and the claimant failed the drug test, the employer discharged the claimant.

REASONING AND CONCLUSIONS OF LAW:

The first issue in this case is the effect of the confidentiality requirements of the federal law. The Omnibus Transportation Employee Testing Act of 1991 authorized the United States Department of Transportation (DOT) to prescribe regulations for testing of commercial motor vehicle operators. 49 USC § 31306. Congress required that the regulations provide for "the confidentiality of test results and medical information" of employees tested under the law. 49 USC § 31306(c)(7). Pursuant to this grant of rulemaking authority, the DOT established confidentiality provisions in 49 CFR 40.321 that prohibit the release of individual test results or medical information about an employee to third parties without the employee's written consent. There is an exception, however, to that rule for administrative proceedings (e.g. unemployment compensation hearing) involving an employee who has tested positive under a DOT drug or alcohol test. 49 CFR 40.323(a)(1). The exception allows an employer to release the information to the decision maker in such a proceeding, provided the decision maker issues a binding stipulation that the information released will only be made available to the parties to the proceeding. 49 CFR 40.323 (b). In the statement of the case, a stipulation in compliance with the regulation has been entered.

In my judgment, this federal confidentiality provision must be followed despite conflicting provisions of the Iowa Open Records Act (Iowa Code chapter 22), the Iowa Administrative Procedure Act (APA) (Iowa Code chapter 17A), and Iowa Employment Security Law (Iowa Code chapter 96). The federal confidentiality laws regarding drug testing must be followed because, under the Supremacy Clause, U.S. Const., Art. VI, cl. 2, state laws that "interfere with, or are contrary to the laws of congress, made in pursuance of the constitution" are invalid. *Wisconsin Public Intervenor v. Mortier*, 501 U.S. 597, 604 (1991).

In this case, the Iowa Open Records law, APA, and Employment Security law actually conflict with the federal statute 49 USC § 31306(c)(7) and the implementing regulations 49 CFR 40.321 to the extent that they would require the release of individual test results or medical information about an employee to third parties beyond the claimant, employer, and the decision maker in this case. It defeats the purpose of the federal law of providing confidentiality to permit the information regarding the test results to be disclosed to the general public. Since the decision to discharge the claimant was based on his positive DOT drug test, it is impossible to issue a public decision identifying the claimant without disclosing the drug test results. Therefore, the public decision in this case is issued without identifying information. A decision with identifying information will be issued to the parties; but that decision and the audio record (all of which contain confidential and identifying information) shall be sealed and not publicly disclosed.

The next issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code § 96.5(2)a.

The Iowa Supreme Court has ruled that an employer cannot establish disqualifying misconduct based on a drug test performed in violation of Iowa's drug testing laws. *Harrison v. Employment*

Appeal Board, 659 N.W.2d 581 (Iowa 2003); *Eaton v. Employment Appeal Board*, 602 N.W.2d 553, 558 (Iowa 1999). As the court in *Eaton* stated, "It would be contrary to the spirit of chapter 730 to allow an employer to benefit from an unauthorized drug test by relying on it as a basis to disqualify an employee from unemployment compensation benefits." *Eaton*, 602 N.W.2d at 558.

Iowa's drug testing laws, however, do not apply to employees who are required to be tested under federal law and regulations. Iowa Code § 730.5(2). Although the court has not addressed this issue, it is logical that the courts would likewise require compliance with federal law before disqualifying a claimant who was discharged for failing a drug test required by federal law and regulations.

Although the claimant asserted he does not use and has not used marijuana or was around anyone who smoked it, the claimant provided no credible evidence to support his assertion that there was no way his test result could be positive. The claimant did not believe the test was conducted professionally at the collection site, but no other driver had a positive test result. The employer discharged the claimant because he had a positive DOT drug test. The employer complied with federal DOT regulations. Therefore, the employer established the claimant committed work-connected misconduct by violating the employer's and DOT's drug policy.

DECISION:

The representative's November 19, 2012 determination (reference 02) is affirmed. The employer discharged the claimant for reasons constituting work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of October 28, 2012. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css