

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JONATHAN D MACE
Claimant

APPEAL NO: 18A-UI-08884-JC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

ECONOMY COATING SYSTEMS INC
Employer

OC: 08/05/18
Claimant: Respondent (2)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 730.5 – Private Sector Drug-free Workplaces
871 IAC 23.43(9) – Combined Wage Claim/Relief of Charges

STATEMENT OF THE CASE:

The employer filed an appeal from the August 16, 2018, (reference 01) unemployment insurance decision that determined the employer's account could not be relieved of charges. After due notice was issued, a hearing was held on September 11, 2018. The claimant did not participate. The employer did participate through Duane Sampson, human resources assistant. Employer's Exhibit 1 was admitted into the record. The administrative law judge took official notice of the administrative records including the fact-finding documents. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Would the employer have been relieved of charges if the claimant had an Iowa claim?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full-time as a painter until March 27, 2018, when he was discharged. The claimant was discharged when he failed a post-accident drug screen, which revealed he tested positive for marijuana (Employer Exhibit 1). The employer had a written policy in accordance with Iowa Code § 730.5, which the claimant was trained on upon hire, and had also previously submitted to a drug screen when he had a prior workplace accident.

Due to a serious accident involving the claimant dropping an aluminum board, requiring him to receive stitches and medical care, he was tested for alcohol and drugs on March 27, 2018 (Employer Exhibit 1). Prior to the test, the claimant informed Mr. Sampson that he "smokes pot every day" and the test would be "dirty." Following a urine sample, which confirmed the claimant's admission, the employer sent the claimant a letter by certified mail with the results, offering the option for a split sample test (Employer Exhibit 1). The claimant declined and separation ensued.

The claimant filed a combined wage claim in Illinois but earned wages from this Iowa employer.

REASONING AND CONCLUSION OF LAW:

For the reasons that follow, the administrative law judge concludes that the employer's account may be relieved of charges.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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 met the requirements of Iowa Code § 730.5 because the claimant received a copy of employer's drug and alcohol use policy, he was tested at a certified testing facility as a result of a work injury, the drug screen was positive for marijuana/THC, claimant was notified by certified mail and offered a split screen sample, and he did not request a second test of the split sample (Employer exhibit 1). Employees are required to be drug free in the workplace. The violation of the known work rule is sufficient job-connected misconduct to disqualify him from receipt of unemployment insurance benefits if his claim were determined under Iowa law.

Iowa Admin. Code r. 871-23.43(9)(a) provides, in part:

(9) Combined wage claim transfer of wages.

a. Iowa employers whose wage credits are transferred from Iowa to an out-of-state paying state under the interstate reciprocal benefit plan as provided in Iowa Code section 96.20 will be liable for charges for benefits paid by the out-of-state paying state. No reimbursement so payable shall be charged against a contributory employer's account for the purpose of Iowa Code section 96.7, unless wages so transferred are sufficient to establish a valid Iowa claim, and such charges shall not exceed the amount that would have been charged on the basis of a valid Iowa claim. However, an employer who is required by law or by election to reimburse the trust fund will be liable for charges against the employer's account for benefits paid by another state as required in Iowa Code section 96.8(5), regardless of whether the Iowa wages so transferred are sufficient or insufficient to establish a valid Iowa claim. Benefit payments shall be made in accordance with the claimant's eligibility under the paying state's law. Charges shall be assessed to the employer which are based on benefit payments made by the paying state.

The employer has established that the claimant's separation was disqualifying and no benefits would be paid under an Iowa claim. Therefore, the employer's account may be relieved of charges under the provisions of the above-stated Administrative Code section.

DECISION:

The August 16, 2018, (reference 01), decision is reversed. The employer's account may be relieved of charges.

Jennifer L. Beckman
Administrative Law Judge

Decision Dated and Mailed

jlb/scn