

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**Claimant**

**APPEAL 17A-UI-10749-LJ**

**Employer**

**ADMINISTRATIVE LAW JUDGE  
PUBLIC DECISION**

**OC: 10/01/17  
Claimant: Appellant (2)**

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49 CFR 40.321 – Sealed Record Confidential Information  
Iowa Code § 96.5(2)a – Discharge for Misconduct  
Federal Motor Carrier Safety Act (FMCSA) 49 CFR 40 and 382

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the October 19, 2017 (reference 01) unemployment insurance decision that denied benefits based upon a determination that claimant was discharged for violation of a known company rule. The parties were properly notified of the hearing. An in-person hearing was held in Des Moines, Iowa, on November 7, 2017. The claimant participated along with one witness. The employer participated through Terminal Manager. Claimant's Exhibit A and Employer's Exhibit 1 were received and admitted into the record.

**ISSUES:**

Shall the hearing record and decision be publicly disclosed?  
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, most recently as a driver, from April 10, 2007, until September 6, 2017, when he was discharged for failing a drug test. The DOT rules govern a commercial driver's license (CDL) and the claimant was required to have a valid CDL for performance of his job duties. The employer maintains a drug testing policy within its collective bargaining agreement. Claimant is not a member of the union and denies having received the drug testing policy. Claimant was selected for a random drug test on August 24, 2017. The employer paid for this testing, and the test was administered on-site by Midlands Testing Services. Claimant provided a urine sample, and this sample tested positive for marijuana. Midlands Testing Services collected a split sample at the time of the test. The medical review officer contacted claimant via telephone on August 29, 2017, and notified him that he tested positive for marijuana. Claimant was given the opportunity to have the split sample tested, but he declined as he felt this would be futile.

When claimant received his test results, he immediately contacted the employer. Employer told claimant things "didn't look good," given the positive test result. Employer provided information

for claimant about the SAP, and claimant obtained an evaluation and attended two counseling sessions. The employer received the test results from Corporate Medical Services on September 5 or 6. Per the Federal Motor Carrier Safety Administration regulations, claimant was no longer permitted to operate a commercial vehicle upon his positive test result. Therefore, the employer discharged him.

### **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). Although the employer did not request such a stipulation before the hearing, I conclude that this does cause the information to be excluded from the hearing record. In the statement of the case, a stipulation in compliance with the regulation has been entered, which corrects the failure of the employer to obtain the stipulation before submitting the information to the appeals bureau.

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). Iowa Code § 22.2(1) provides: “Every person shall have the right to examine and copy a public record and to publish or otherwise disseminate a public record or the information contained in a public record.” The exhibits, decision, and audio recording in an unemployment insurance case would meet the definition of “public record” under Iowa Code § 22.1-3. Iowa Code § 17A.12(7) provides that contested case hearings “shall be open to the public.” Under Iowa Code § 96.6(3), unemployment insurance appeals hearings are to be conducted pursuant to the provisions of chapter 17A. The unemployment insurance rules provide that copies of all presiding officer decisions shall be kept on file for public inspection at the administrative office of the department of workforce development. Iowa Admin. Code r. 871-26.17(3).

The federal confidentiality laws regarding drug testing and medical information 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). One way that federal law may pre-empt state law is when state and federal law actually conflict. Such a conflict arises when “compliance with both federal and state regulations is a physical impossibility or when a state law “stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.” *Id.* at 605. Although the general principle of confidentiality is set forth in a federal statute (49 USC § 31306(c)(7)), the specific implementing requirements are spelled out in the federal regulation (49 CFR 40.321). The United States Supreme Court has further ruled that “[f]ederal regulations have no less preemptive effect than federal statutes.” *Capital Cities Cable, Inc. v. Crisp*, 467 U.S. 691, 699 (1984) (ruling that federal regulation of cable

television pre-empted Oklahoma law restricting liquor advertising on cable television, and Oklahoma law conflicted with specific federal regulations and was an obstacle to Congress' objectives).

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 would defeat the purpose of the federal law of providing confidentiality to permit the information regarding the test results to be disclosed to the general public. Therefore, the public decision in this case will be issued without identifying information. A decision with identifying information will be issued to the parties; but that decision, the audio record, and any documents in the administrative file (all of which contain confidential and identifying information) shall be sealed and not publicly disclosed.

For the reasons that follow, the administrative law judge concludes the 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).

Section 382.601 of the Federal Motor Carrier Safety Act (FMCSA) provides that the employer is required to develop a policy about the misuse of alcohol and controlled substances and provide proof of employee receipt. 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).

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. While the employer certainly may have been within its rights to test and fire the claimant, it failed to provide him a written copy of the drug testing policy, which is required by the FMCSA. Thus, the employer cannot use the results of the drug screen as a basis for disqualification from benefits. Benefits are allowed.

**DECISION:**

The October 19, 2017 (reference 01) unemployment insurance decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

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Elizabeth A. Johnson  
Administrative Law Judge

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Decision Dated and Mailed

lj/scn