

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

JOHN E HAGEMAN
Claimant

NEW FASHION PORK LLP
Employer

APPEAL 15A-UI-07877-JCT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 06/14/15
Claimant: Appellant (2)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 730.5 – Private Sector Drug-free Workplaces

STATEMENT OF THE CASE:

The claimant filed an appeal from the June 30, 2015, (reference 01) unemployment insurance decision that denied benefits based upon separation. The parties were properly notified about the hearing. A telephone hearing was held on August 27, 2015. The claimant participated personally with Ryan Frank, former employee. The employer participated through Shelley Pavich, human resources. Tim Long also testified for the employer. Employer Exhibits One through Six were admitted into evidence.

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: The claimant was employed part-time as a herdsman and was separated from employment on April 21, 2015, when he was discharged (Employer Exhibit Six).

On March 26, 2015, Tim Long observed the claimant yelling and hollering to himself while loading dead pigs into a truck, and while working alone. He further observed the claimant's eyes being dilated and visible open sores, which were consistent with drug use based on the training he had received. Based on his observations, the claimant was requested and complied with a screening for drugs and alcohol.

The employer has a policy with regarding to testing for drugs and alcohol (Employer Exhibit Two). Amongst the reasons an employee may be tested is for reasonable suspicion. The claimant was made aware of the employer's policies, including the drug and alcohol policy, at the time of hire (Employer Exhibit One). If an employee tests positive during a drug screening, the employer will allow a one-time rehabilitation option, at the expense of the employee.

The medical review officer (MRO) was unable to initially contact the claimant to discuss the results but eventually confirmed the results. The claimant was then notified by the employer of

his results by phone. The results were not provided to claimant in writing delivered by certified mail, return receipt requested. The claimant was offered the one-time rehabilitation option but declined due to expense and lack of transportation. He was also told completion of the program would not guarantee a return to his job. The claimant was subsequently discharged after a positive drug screen for methamphetamine, based on testing for reasonable suspicion.

REASONING AND CONCLUSIONS OF LAW:

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

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 if, among other conditions, the employer has "probable cause to believe that an employee's faculties are impaired on the job." 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 test before taking disciplinary action against an employee. Upon a positive drug screen, Iowa Code § 730.5(9)(g) requires, under certain circumstances, that an employer offer substance abuse evaluation and treatment to an employee the first time the employee has a positive drug test. 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 this case, the claimant tested positive during a drug and alcohol screening for methamphetamine based on reasonable suspicion, as observed by Tim Long. The claimant did not participate in the requested drug counseling/treatment to preserve his job. However, while the employer certainly was within its rights to test and fire the claimant, it failed to provide sufficient written notice of the test results, according to the strict and explicit statutory requirements. Thus, the employer cannot use the results of the drug screen as a basis for disqualification from benefits and benefits are allowed.

Nothing in this decision should be interpreted as a condemnation of the employer’s right to terminate the claimant for violating its policies and procedures. The employer had a right to follow its policies and procedures. The analysis of unemployment insurance eligibility, however, does not end there. This ruling simply holds that the employer did not meet its burden of proof to establish the claimant’s conduct leading separation was misconduct under Iowa law.

DECISION:

The June 30, 2015, (reference 01) decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible.

Jennifer L. Coe
Administrative Law Judge

Decision Dated and Mailed

jlc/pjs