

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**DAVID A BINGHAM**  
Claimant

**VERMEER MANUFACTURING COMPANY  
INC**  
Employer

**APPEAL 15A-UI-07816-SC-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 06/21/15**  
**Claimant: Appellant (2)**

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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 July 6, 2015, (reference 01) unemployment insurance decision that denied benefits based upon the determination he was discharged for violating a known company rule. The parties were properly notified about the hearing. A telephone hearing was held on August 4, 2015. Claimant David Bingham participated on his own behalf. Employer Vermeer Manufacturing participated through Human Resources Business Partner Julia Schurman and Group Leader Robert Griego. Claimant's Exhibit A was received. Employer's Exhibit One was received.

**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 full-time as a Machining Specialist beginning January 28, 2013, and was separated from employment on June 8, 2015, when he was terminated. On May 29, 2015, the claimant sustained an injury at work that required him to be transported by ambulance to the emergency room for treatment. His manager, Todd Atchison, accompanied him to the hospital.

The claimant was drug tested while at the hospital. The hospital printed off a copy of the claimant's medications which included Clonazepam, a Benzodiazepine. The claimant believed Atchison was given a copy of the same documentation. The claimant was told not to return to work until he heard from the employer. The claimant was never contacted by the employer's medical review officer (MRO).

On June 5, 2015, the claimant received a certified letter, return receipt requested, notifying him that the drug test came back positive for Benzodiazepines. He was notified of his right to obtain a test of the second sample at his own expense. He was given seven days to respond to the letter. On June 8, 2015, the claimant received another letter and phone call from the employer notifying him that he was terminated due to the positive drug test.

**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. 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).

The employer has the burden of proving disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). 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. Emp't Appeal Bd.*, 659 N.W.2d 581 (Iowa 2003); *Eaton v. Emp't Appeal Bd.*, 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 law permits an employer to take disciplinary action against an employee, including termination of employment, upon receipt of "a confirmed positive test result for drugs or alcohol." Iowa Code § 730.5(10) "Confirmed positive test result means ... the results of ... a blood [or] urine ... test in which the level of controlled substances or metabolites in the specimen analyzed meets or exceeds nationally accepted standards for determining detectable levels of controlled substances as adopted by the federal substance abuse and mental health services administration." Iowa Code § 730.5(1)b. SAMHSA has not established a standard for determining detectable levels of benzodiazepine—it only has standards for marijuana metabolites/THC, cocaine metabolites, amphetamines (including methamphetamine), opiates (including codeine, heroin, morphine), and phencyclidine (PCP). Therefore, the claimant's termination violated Iowa Code § 730.5(10) and § 730.5(1)b.

Additionally, Iowa law requires the employer give the employee a chance to provide any relevant medical information including but not limited to any current prescriptions. Iowa Code § 730.5(7)(c)(2). The MRO is then charged with reviewing the positive test result with the medical information provided the employee to confirm a positive test result. Iowa Code § 730.5(7)(g). In this case, the claimant never received a phone call from the MRO to obtain information about his medications. Additionally, his employer received a copy of his medications at the hospital. The employer's witness claimed during her testimony that an MRO must have contacted the claimant; however, she was unable to provide the name of the MRO and she was not present when the call was made. When the record is composed solely of hearsay evidence, that evidence must be examined closely in light of the entire record. *Schmitz v. Iowa Dep't Human Servs.*, 461 N.W.2d 603, 607 (Iowa Ct. App. 1990). The Iowa Supreme Court has ruled that if a party has the power to produce more explicit and direct evidence than it chooses to present, the administrative law judge may infer that evidence not presented would reveal deficiencies in the party's case. *Crosser v. Iowa Dep't of Pub. Safety*, 240 N.W.2d 682 (Iowa 1976). Mindful of the ruling in *Crosser, id.*, and noting that the claimant presented direct, first-hand testimony while the employer relied upon second-hand reports, the administrative law judge concludes that the claimant's recollection of the events is more credible than that of the employer. As the employer failed to obtain a list of the claimant's medication or have an MRO review the results it also violated Iowa law related to work-free drug places.

While the employer certainly was within its rights to test the claimant in a post-accident situation, it did not comply with the provisions of Iowa law related to drug-free workplaces. Thus, the employer cannot use the results of the drug screen as a basis for disqualification from benefits and benefits are allowed.

**DECISION:**

The July 6, 2015, (reference 01) decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible.

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Stephanie R. Callahan  
Administrative Law Judge

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Decision Dated and Mailed

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