

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

EARL L NELSON
Claimant

APPEAL NO. 13A-UI-04787-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DEE ZEE INC
Employer

OC: 03/24/13
Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated April 17, 2013, reference 01, that concluded he was discharged for work-connected misconduct. A telephone hearing was held on May 28, 2013. The parties were properly notified about the hearing. The claimant participated in the hearing with a witness, Lindsey O'Neil. Sarah Tew participated in the hearing on behalf of the employer. Exhibits One through Five were admitted into evidence at the hearing.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked full time for the employer as a shift manager from July 13, 2009, to March 5, 2013. He was informed and understood that under the employer's work rules, employees were required to submit to a drug test under certain circumstances, including when an employee is reasonably believed to be using a controlled substance, and were subject to termination if they tested positive for drugs. Supervisors with the employer have received training on recognizing the sign of drug or alcohol use.

Pursuant to the policy, the claimant was required to submit to a drug test on February 28, 2013, but the samples were rejected as being insufficient to test and out of the acceptable temperature range. He was required to go to a clinic to provide a urine sample on March 1, 2013. A urine sample was properly taken from the claimant. He signed a certification on the drug testing custody and control form stating: "I certify that I provided my urine specimen to the collector; that I have not adulterated it in any manner; each specimen bottle used was sealed with a tamper-evident seal in my presence; and that the information provided on this form and on the label affixed to each specimen bottle is correct." The specimen was properly analyzed using an initial drug screen test and subsequent confirmatory test by a certified laboratory. The analysis disclosed the presence of amphetamines/methamphetamines in the claimant's system in violation of the employer's policy. The claimant was discharged by the employer on March 7, 2013, after it received the results of the drug test.

The employer was sent the claimant a letter by certified mail, return receipt requested on March 7, 2013, informing him about the result of the test and his right to have a split sample tested. The letter informed him about the cost of the test, which was \$175. The claimant received the letter on March 8. He did not request that the split sample be tested.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

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.

The employer has satisfied all of the conditions of Iowa Code § 730.5. The claimant argued that he had not witnessed the specimen being sealed, but this is contradicted by the drug testing custody and control form that he signed. He pointed out the different specimen identification numbers on the specimens on February 28 and March 1 but this makes sense since they were different samples. The claimant violated the employer's drug and alcohol policy and is subject to disqualification.

DECISION:

The unemployment insurance decision dated April 17, 2013, reference 01, is affirmed. The claimant is disqualified from receiving unemployment insurance benefits until he has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/css