

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JOHN STEINKUEHLER**  
Claimant

**APPEAL NO: 13A-UI-03183-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**PECH OPTICAL CORP**  
Employer

**OC: 01/27/13**  
**Claimant: Appellant (1)**

Iowa Code § 96.5(2)(a) - Discharge for Misconduct

**STATEMENT OF THE CASE:**

John Steinkuehler (claimant) appealed an unemployment insurance decision dated March 8, 2013, reference 01, which held that he was not eligible for unemployment insurance benefits because he was discharged from Pech Optical Corporation (employer) for work-related misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 1, 2013. The claimant participated in the hearing with Attorney Willis Hamilton. The employer participated through Barbara Uhl-Michaleson, Human Resources Generalist and Peggy Hintergardt, Employer Representative. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a full-time maintenance department employee from November 12, 2007 through January 31, 2013 when he was discharged for testing positive for marijuana. The employer has a written drug testing policy which prohibits drug use and provides that employees are tested for drugs if they sustain a work-related injury. The claimant sustained a work-related injury on second shift on January 8, 2013. He was taken to St. Luke's Hospital in Sioux City where he was tested for drugs. A split sample was taken and the claimant tested positive for marijuana. The employer was notified on January 15, 2013 and notified the claimant on that same date. The claimant was advised he could have a confirmatory test of the secondary sample but he told the employer it would not make any difference since he had smoked marijuana around the Christmas holiday.

On January 18, 2013, the employer sent the claimant a certified, return receipt letter advising him he had seven days in which to respond if he wanted a confirmatory test of the secondary sample. The letter also advised him he could go through counseling measures and that failure

to take any action would result in his termination for violation of the employer's drug and alcohol policy. The claimant signed for the certified letter on January 22, 2013 but failed to contact the employer and was subsequently discharged.

### **REASONING AND CONCLUSIONS OF LAW:**

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a.

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.

871 IAC 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.

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The claimant was discharged for violation of the employer's drug and alcohol policy due to his positive drug test for marijuana on January 8, 2013. Iowa Code § 730.5 sets forth the rules by which a private company may screen its employees for use of illegal drugs. The employer has a written drug testing policy per Iowa Code § 730.5(9)(b) and tested the claimant after a work-related injury. The test was performed during the claimant's workday at St. Luke's Hospital in Sioux City and split samples were taken at the time of collection. Iowa Code §§ 730.5(6) and (7)(a-c). The employer was informed of the results on January 15, 2013 and notified the claimant on that same date.

The employer subsequently sent the claimant notification on January 18, 2013 by certified mail, return receipt requested of the positive result and his right to obtain a confirmatory test of the secondary sample. Iowa Code § 730.5(7)(i)(1) and (2). He was given seven days to request a confirmatory test but was also advised he could go through counseling measures. The claimant failed to contact the employer and was subsequently discharged.

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 met the requirements of Iowa Code § 730.5. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

**DECISION:**

The unemployment insurance decision dated March 8, 2013, reference 01, is affirmed. The claimant is not eligible to receive unemployment insurance benefits because he was discharged from work for misconduct. Benefits are withheld until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

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Susan D. Ackerman  
Administrative Law Judge

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Decision Dated and Mailed

sda/pjs