

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MARK A THOMPSON**  
Claimant

**APPEAL NO. 12A-UI-14248-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**JACOBSON STAFFING COMPANY**  
Employer

**OC: 10/28/12**  
**Claimant: Appellant (1)**

Section 96.5(2)a – Discharge

**STATEMENT OF THE CASE:**

The claimant, Mark Thompson, filed an appeal from a decision dated November 30, 2012, reference 02. The decision disqualified him from receiving unemployment benefits. After due notice was issued a hearing was held by telephone conference call on January 8, 2013. The claimant participated on his own behalf. The employer, Jacobson Staffing, participated by Account Manager Mike Duberkey.

**ISSUE:**

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

**FINDINGS OF FACT:**

Mark Thompson was employed by Jacobson from March 11, 2011 until October 30, 2012. During that time he was assigned to Titan Distributing. The claimant was given a copy of the employer's drug testing policy which allows for random testing. Every month a third-party, Concentra, randomly selects employees for drug testing. Staff from Concentra goes to the workplace where the employees are informed they have been selected and taken to a private area to give the sample.

On October 26, 2012, Mr. Thompson was selected but his urine sample was outside the required temperature range. Account Manager Mike Duberkey was present when the nurse read the applicable law to the claimant, twice. He was informed he was to give a second sample which would be "observed" in accordance with the law by another male. In addition, because the first sample was outside the temperature range, Mr. Thompson would have to lift his shirt "above the navel" and lower the waist of his trousers just above the groin to establish no hidden fluid retention devices were on his person. This would also be observed by another male.

The claimant refused to be "searched" and to give another sample. Mr. Duberkey spoke with him and explained the procedure and informed him refusal to give another sample was grounds for discharge. Mr. Thompson still refused and was suspended. He returned to work on

Monday, October 29, 2012, and had to be told again he was suspended pending further investigation. Mr. Duberkey consulted with Operations Manager Frank Tursi who confirmed the claimant's actions were grounds for discharge. The claimant was informed by a letter from Mr. Tursi he was discharged.

**REASONING AND CONCLUSIONS OF LAW:**

Iowa Code section 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 claimant was advised by the employer's policy he was subject to random drug screening. On the occasion he was selected his sample was not within the required temperature range and he refused to give a second sample. His objection he was to be "searched" is not valid. It was merely a visual observation of his mid-section to verify he had no devices which could be used to store a urine sample.

In spite of being advised he would not be searched, and that he must give a second sample, the claimant still refused. The refusal stood even when advised it was ground for discharge. The employer has the right under Iowa law to randomly test its employees and Jacobson complied with the provisions of the statute. The refusal to give the second sample is a violation of a known company policy. This is insubordination and conduct not in the best interests of the employer. The claimant is disqualified.

**DECISION:**

The representative's decision of November 30, 2012, reference 02, is affirmed. Mark Thompson is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount in insured work, provided he is otherwise eligible.

---

Bonny G. Hendricksmeier  
Administrative Law Judge

---

Decision Dated and Mailed

bgh/pjs