

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JEFFREY S JONES**

Claimant

**APPEAL NO. 11A-UI-04504-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ADEL WHOLESALERS INC**

Employer

**OC: 02/20/11**

**Claimant: Appellant (2)**

Section 96.5(2)a – Discharge

**STATEMENT OF THE CASE:**

The claimant, Jeffrey Jones, filed an appeal from a decision dated March 23, 2011, reference 02. The decision disqualified him from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on April 28, 2011. The claimant participated on his own behalf and was represented by Mark Fowler. The employer, Adel Wholesalers, participated by Branch Manager David Smith.

**ISSUE:**

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

**FINDINGS OF FACT:**

Jeffrey Jones was employed by Adel Wholesalers from February 2, 2010 until March 23, 2011 as a full-time truck driver. The employer does not have a written drug policy. Although employees are given a pre-employment drug screening they are not informed that further drug testing may be done after an accident.

On January 22, 2011, the claimant injured his back at work and was seen at Genesis Occupational Health. He was off work due to the injury until February 1, 2011. When he returned to work Branch Manager David Smith informed him he would have to go for a drug screening test and he again reported to Genesis Occupational Health where he gave a urine sample.

It was analyzed and a medical review officer contacted the claimant on February 20, 2011, and notified him he had tested positive for marijuana. The claimant had been smoking marijuana during his time off after the accident but denied smoking any at the time of the accident. Mr. Smith was notified by the corporate office later that day the claimant was to be discharged. Mr. Jones was not sent a certified letter informing him of the test results and his right to have the split sample retested at a lab of his choice.

## **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 employer has failed to comply with the provisions of Iowa Code chapter 730.5. There is no written drug policy given to the claimant. The test was done nine days after the accident. The claimant was not sent a certified letter informing him of the results and his right to re-testing of the sample.

Although the claimant admitted to smoking marijuana during his medical leave there is no evidence the employer could provide he was under the influence of a controlled substance at the time the accident occurred. The test results are valid only for the date the sample was given, which was nine days after the accident.

The employer has failed to meet its burden of proof to establish the claimant is guilty of misconduct and disqualification may not be imposed.

**DECISION:**

The representative's decision of March 23, 2011, reference 02, is reversed. Jeffrey Jones is qualified for benefits, provided he is otherwise eligible.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

bgh/css