

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHELLY L STACY

Claimant

APPEAL NO: 18A-UI-05833-TN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

BAGCRAFTPAPERCON II LLC

Employer

OC: 04/22/18

Claimant: Appellant (2)

Iowa Code § 96.5(2)a – Discharge

STATEMENT OF THE CASE:

Shelly L. Stacy, the claimant, filed a timely appeal from a representative's unemployment insurance decision dated May 14, 2018, (reference 01) which denied unemployment insurance benefits finding that the claimant was discharged from work on April 19, 2018, for violation of a known company rule. After due notice was provided, a telephone conference hearing was held on June 13, 2018. Claimant participated. Participating as witnesses for the claimant were Ms. Heaven Stacy, claimant's niece, Ms. Sally Wehrle, claimant mother, Mr. Dennis Wehrle, claimant's step-father. Employer participated by Mr. Eddie Payne, Human Resource Manager. Employer's Exhibits 1 and 2 are offered into evidence. Employer's Exhibit 1 was received into evidence, Employer's Exhibit 2 was not received into evidence based on the claimant's objection that she had not received a copy.

ISSUE:

The issue is whether the claimant was discharged for work connected misconduct sufficient to warrant the denial of job insurance benefits.

FINDINGS OF FACT:

Having considered all of the evidence in the record, the administrative law judge finds: Shelly Stacy was most recently employed by Bagcraftpapercon II LLC from June 8, 2016 until April 19, 2018, when she was discharged by the employer. Ms. Stacy was employed as a full-time machine operator, working on the third shift and was paid by the hour.

Ms. Stacy was discharged on April 19, 2018, based upon a series of events that began on or about Friday, April 9, 2018. On that night, Ms. Stacy had become anxious and had left work early with the permission of her supervisor, because she had overheard two male employee's had made conversation referring to an individual who had provided information about the use of controlled substances. Ms. Stacy believed that the references that the men were making referred to her. The claimant has a history of substance abuse, and she had been hospitalized and placed into treatment in the past. She left work that night with permission because the statements had made her very anxious.

For reasons that are unclear, Ms. Stacy obtained an Adderall (controlled substance) capsule to alleviate her anxiety. The claimant had obtained the tablet from another employee, off premises during non-working hours, and ingested the tablet after she left work that night.

Although the claimant believed that the Adderall would lessen her anxiety, the result was the opposite and Ms. Stacy was hospitalized and subsequently involuntarily committed for a psychiatric evaluation by the mental health board.

Family members contacted the company and notified the company that Ms. Stacy had been hospitalized and there was a psychiatric hold on her. Family members also informed local management of their belief that some the employee's at the company's facility were using illegal drugs and expressed their concern that the work environment had caused the claimant to relapse. Family members also spoke to upper management at the company's corporate level. Family members were assured that the company would take action, the claimant would not lose her job, and the company would assist Ms. Stacy while she was in recovery. The company also stated its intention to investigate the allegations of drug use at the facility. During the time she was hospitalized, Ms. Stacy maintained regular communication with the company's Human Resource Department.

While the claimant was away from work, management investigated the allegations and interviewed numerous company employees. In references to questions about the use of controlled substances by employees, the claimant's name was mentioned on numerous occasions by employees that were being interviewed.

On April 12, 2018, Ms. Stacy was released to return to work by her physician and contacted the company about returning to work that night. The claimant was informed by Mr. Payne, the Human Resource Manager that she should not return to work at that time, but stay home pending the outcome of the company's investigation that was on-going. The claimant was assured that any additional days of absence would not be held against her.

On Friday, April 13, 2018, the claimant was contacted by Mr. Payne. Because a number of employees had mentioned the claimant's name in the investigations, Mr. Payne questioned the claimant about her use of controlled substances. Ms. Stacy stated she had obtained one Adderall capsule from a person who worked at the plant but she would not identify the person. The claimant stated that she had obtained the capsule from the individual during non-working hours and away from the employer's facility and that she had ingested the capsule after being given permission to leave work early and as a result of taking the pill, she had been hospitalized. Mr. Payne indicated that he would share that information with corporate management. A short time later, Mr. Payne telephoned the claimant back and informed her that she was being discharged from employment.

The employer reasoned that based upon the statements of a number of employees that named Shelly Stacy during the investigation about potential drug use at the facility, and the claimant's admission to using a controlled substance without having a valid prescription for its use, the employer this tantamount to failing a drug test under the company's drug testing policy.

It appears that a number of conversations had taken place between family members, the claimant and the company management about potential short-term disability and/or Family Medical Leave Act (FMLA) coverage for the claimant, however, those conversations do not bear directly on the claimant's separation from employment.

It is the claimant's position that she had not violated the company's drug policy, because she had not used, possessed, or been under the influence on any illegal drugs or controlled substances on employer premises or during working time, and that she had self-reported her personal drug use prior to being discharged, with the intent to obtain assistance through the company.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes work related misconduct on the part of the claimant sufficient to warrant the denial of job insurance benefits. It does not.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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 proof in this matter. See Iowa Code § 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See *Lee v. Employment Appeal Board*, 616 N.W.2d 661

(Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See *Gimbel v. Employment Appeal Board*, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

Iowa Code Sections 730.5 provides the authority in which private sector employer's doing business in Iowa may conduct drug or alcohol testing of employees. In *Eaton v. Emp't Appeal Bd.*, 602 N.W.2d 553 (Iowa Ct. App. 1999), The Supreme Court of Iowa considered the statute and held "an illegal drug test cannot provide a basis to render an employee ineligible for unemployment compensation benefits." Thereafter in *Harris v. Employment Appeal Board*, 659 N.W.2d 581 (Iowa Ct. App. 2003) the Supreme Court held that where an employer had not complied with the statutory requirements for the drug test, the test could not serve as a basis to disqualify a claimant for benefits. In the present case, the employer may have had reasonable suspicion to request drug testing, but the employer instead chose to rely on unsworn statements made from unnamed individuals during the investigation and the claimant's statement that she had ingested one capsule off premises while off work to conclude that the claimant had violated the company's drug policy.

The claimant's statement to the employer was not an admission that she had violated the company's policy.

In this matter, the employer has substituted the statements of unnamed employees and the claimant's admission that she had taken a Rx tablet off-duty in lieu of following its own drug testing policy. The employer's method to determine if the claimant had violated the company's drug policy was not reasonable. The evidence is insufficient to establish that the claimant was discharged for violation of the employer's drug policy. Intentional disqualifying misconduct on the part of the claimant has not been shown. Accordingly, the claimant is eligible to receive unemployment insurance benefits, providing that she meets all other eligibility requirements for benefits each week that she claims benefits.

DECISION:

The representative's unemployment insurance decision dated May, 14, 2018, reference 01 is reversed. Claimant was discharged under non-disqualifying conditions. Unemployment insurance benefits are allowed provided the claimant meets all the eligibility requirements of Iowa law.

Terry P. Nice
Administrative Law Judge

Decision Dated and Mailed

tn/scn