

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**TRAVIS J JONGSMA**  
Claimant

**APPEAL NO. 12A-UI-07474-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SEVENTH AVENUE INC**  
Employer

**OC: 05/27/12  
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge for Misconduct  
871 IAC 24.32(1) – Definition of Misconduct  
730.5 – Drug Testing

**STATEMENT OF THE CASE:**

The claimant appealed a department representative's decision dated June 19, 2012, reference 01, that held he was discharged for misconduct on May 31, 2012, and benefits are denied. A hearing was held on July 16, 2012. The claimant participated. Lynn Rankin, HR Assistant, Manager, participated for the employer. Employer Exhibit One, pages 1-12, were received as evidence.

**ISSUE:**

The issue is whether the claimant was discharged for misconduct.

**FINDINGS OF FACT:**

The administrative law judge, having heard the witness testimony and having considered the evidence in the record, finds that: The claimant worked as a full-time forklift operator from November 14, 2011 to May 31, 2012. The claimant received the Drug & Alcohol policy of the employer that contains a provision he is subject to random drug testing.

The claimant was the subject of a post-accident urine drug screen on April 10, and he tested positive for marijuana. A medical review officer (MRO) informed claimant of the test result on April 14, and he was unable to provide a legitimate medical reason of the positive test. The HR manager visited with claimant on April 17 with the test result in light of the employer substance abuse policy.

On April 18 the HR manager sent claimant a certified letter that he received summarizing the test result and post-test procedure as it affected his employment. He was given the option for drug/alcohol assessment with treatment at his expense. He would be subject to six (6) random tests over the next twelve (12) months. A positive test would result in employment termination.

After the employer received the assessment, it sent claimant a letter dated May 3 that outlined the completion of prescribed treatment as a condition of continued employment. He received

the letter. Claimant tested positive for marijuana on a May 21 random drug screen, and he was so informed by a MRO who determined he had no legitimate reason for this result.

The employer sent claimant a certified letter dated May 31 that terminated his employment for the positive marijuana random drug test. He was given the opportunity to appeal the decision and for a confirmatory test. Claimant received the letter, did not appeal the decision or request a confirmatory test of the split sample.

### **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 administrative law judge concludes the employer established misconduct in the discharge of the claimant on May 31, 2012, because he violated the employer substance abuse policy. The employer followed the drug testing requisites of Iowa Code section 730.5.

The claimant's misconduct is the violation of the employer drug/alcohol substance abuse policy by testing positive for marijuana in a post-accident drug screen and after electing assessment / treatment, tested positive for marijuana on a random drug test. Claimant objects to random drug testing during the fourth week of his treatment program.

The record shows claimant was informed of the first positive marijuana test on April 18, and the follow-up random test was on May 21 that is more than 30 days after his first test. He knew

when he accepted the assessment/treatment option he was subject to random testing and there is no provision that he has a grace period until after treatment has concluded.

**DECISION:**

The decision of the representative dated June 19, 2012, reference 01, is affirmed. The claimant was discharged for misconduct in connection with employment on May 31, 2012. Benefits are denied until the claimant requalifies by working in and being paid wages for insured work equal to ten times his weekly benefit amount, provided the claimant is otherwise eligible.

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Randy L. Stephenson  
Administrative Law Judge

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Decision Dated and Mailed

rls/pjs