

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SHARI G WEIDEMANN**  
Claimant

**APPEAL NO. 13A-UI-11299-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**DELTA SPORTS PRODUCTS LLC**  
Employer

**OC: 09/08/13**  
**Claimant: Appellant (2)**

Section 96.5(2)a – Discharge

**STATEMENT OF THE CASE:**

The claimant, Shari Weidemann, filed an appeal from a decision dated September 30, 2013, reference 01. The decision disqualified her from receiving unemployment benefits. After due notice was issued a hearing was held by telephone conference call on October 31, 2013. The claimant participated on her own behalf. The employer, Delta Sports Products LLC (Delta), participated by Controller Heather Burrows.

**ISSUE:**

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

**FINDINGS OF FACT:**

Shari Weidemann was employed by Delta from February 8, 2010 until September 27, 2013 as a full-time administrative assistant. The employer has a written drug policy which the claimant received. It sets out the random drug testing policy and the drugs for which the samples will be tested.

Ms. Weidemann had been selected for testing more than once in her tenure and tested negative each time. On September 3, 2013, she was again selected. The samples were to be given in a restroom adjacent to the training room where the selected employees were to report. At first the claimant had been unable to give a sample because she had voided just prior to being informed she had been selected. The nurse allowed her to wait in the training room while three other employees gave samples.

When the claimant was ready to give the sample the nurse gave her a beaker which had already been removed from the wrapping and the lid removed. When Ms. Weidemann questioned whether that was appropriate the nurse said it was “okay.” A medical review officer contacted her to ask if she was on any prescription or over the counter medication and she said she was not.

The sample was tested and came back positive for a controlled substance. The claimant was notified by certified mail she had the right to have the split sample retested and she elected that option. The second analysis came back positive on September 27, 2013, and Controller Heather Burrows notified her by phone she was discharged.

The claimant denied having consumed controlled substances at any time.

**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 complied with the requirement of the Iowa drug testing law. The only issue is whether or not the pre-opened container given to the claimant for the sample collection could have been contaminated. The claimant recognized this as a problem when she questioned the nurse. The beaker had been sitting unopened for an unknown period of time with other people in the room while they were waiting to be tested.

Given the seriousness of the accusation of drug use the administrative law judge does not find it inappropriate to require the strict protocols of providing a sealed beaker be given to an employee rather than one which had been sitting about unsealed for an unknown period of time.

The employer has failed to establish the unsealed beaker was uncontaminated and did not result in an inaccurate result. Misconduct has not been established and disqualification may not be imposed.

**DECISION:**

The representative's decision of September 30, 2013, reference 01, is reversed. Shari Weidemann is qualified for benefits, provided she is otherwise eligible.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

bgh/pjs