

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**DARVELL L GAMBLIN**  
Claimant

**PACKERS SANITATION SERVICES INC**  
Employer

**APPEAL 17A-UI-01491-H2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 01/15/17  
Claimant: Respondent (1)**

Iowa Code § 96.5(2)a – Discharge/Misconduct  
Iowa Code § 730.5 – Private sector drug-free workplaces

**STATEMENT OF THE CASE:**

The employer filed an appeal from the February 6, 2017, (reference 01) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on March 2, 2017. Claimant did not participate. Employer participated through Marissa Rowen, Office Manager.

**ISSUE:**

Was the claimant discharged due to job connected misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a laborer/sanitation worker beginning on July, 19, 2016 through September 21, 2016, when he was discharged. When he was hired, the claimant was given a copy of the employer's drug and alcohol policy. That policy put him on notice that if he sustained a work related injury and was taken for medical treatment for the injury he would be tested for drugs and alcohol.

On September 21, the claimant hurt his back while at work and was taken for medical treatment. He was tested for drugs and alcohol. His test was positive for marijuana and he was discharged by his supervisor, Steven Esparza that same day.

The claimant was not notified of his test results by certified mail. Nor was he notified by certified mail of his right to have the split-sample tested at his own cost.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

Iowa Code § 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.

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 proving disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982).

Iowa Code §730.5(9) requires that a written drug screen policy be provided to every employee subject to testing. Iowa Code §730.5(7)(i)(1) mandates that an employer, upon a confirmed positive drug or alcohol test by a certified laboratory, notify the employee of the test results by certified mail and the right to obtain a confirmatory test before taking disciplinary action against an employee. Upon a positive drug screen, Iowa Code §730.5(9)(g) requires, under certain circumstances, that an employer offer substance abuse evaluation and treatment to an employee the first time the employee has a positive drug test. The Iowa Supreme Court has held that an employer may not "benefit from an unauthorized drug test by relying on it as a basis to disqualify an employee from unemployment compensation benefits." *Eaton v. Iowa Employment Appeal Board*, 602 N.W.2d 553, 557, 558 (Iowa 1999).

The employer, failed to give claimant notice of the test results according to the strict and explicit statutory requirements requiring notification via certified mail. The employer failed to notify the claimant by certified mail of his opportunity to have the split sample tested at his own cost. Because the employer has not complied with the strict requirements of Iowa Code Chapter 730, they have not established a violation of their drug and alcohol policy sufficient to disqualify the

claimant from receipt of unemployment insurance benefits. Benefits are allowed, provided the claimant is otherwise eligible.

**DECISION:**

The February 6, 2017, (reference 01), decision is affirmed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible.

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Teresa K. Hillary  
Administrative Law Judge

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Decision Dated and Mailed

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