

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

THOMAS A THOMPSON
Claimant

APPEAL NO: 10A-UI-08628-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARGILL MEAT SOLUTIONS CORP
Employer

**OC: 05/16/10
Claimant: Respondent (1)**

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The employer appealed a representative's June 10, 2010 decision (reference 01) that held the claimant qualified to receive benefits and the employer's account subject to charge because the claimant had been discharged for non disqualifying reasons. A telephone hearing was held on August 3, 2010. The claimant participated in the hearing with his union representative, Brian Ulin. Jessica Sheppard, a human resource associate, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on May 24, 2007. He worked as a full-time production employee. On April 8, 2009, the claimant entered into a drug and rehabilitation agreement with the employer. Part of the agreement required the claimant to take random drug tests for two years. The drug tests had to be negative to comply with terms of the agreement.

Prior to May 10, 2010, the claimant had taken nine random drug tests and they were all negative. On May 10, the employer asked the claimant to submit to a drug test. The claimant did not see the employer's representative seal the specimen he provided for the test. The employer received information that the claimant tested positive for one of the tested substances. While a nurse or someone else may have told the claimant he could have the split sample tested, the employer did not send the claimant a certified letter informing him that he could have the split sample tested at a laboratory he chose.

The employer discharged the claimant on May 19, 2010, for failing to comply with the drug and rehabilitation program the claimant started on April 8, 2009.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code section 96.5-2-a. For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The Iowa Supreme Court has ruled that an employer cannot establish disqualifying misconduct based on a drug test performed in violation of Iowa's drug testing laws. *Harrison v. Employment Appeal Board*, 659 N.W.2d 581 (Iowa 2003); *Eaton v. Employment Appeal Board*, 602 N.W.2d 553, 558 (Iowa 1999). As the court in *Eaton* stated, "It would be contrary to the spirit of chapter 730 to allow an employer to benefit from an unauthorized drug test by relying on it as a basis to disqualify an employee from unemployment compensation benefits." *Eaton*, 602 N.W.2d at 558. Iowa Code section 730.5-9-a states an employer can take disciplinary action against an employee including termination of employment, upon receipt of "a confirmed positive test result for drugs or alcohol." However, for a person to be terminated for a failed drug test, the law requires an employer to notify an employee in writing by certified mail, return receipt requested, of the results of the test, the right to request and obtain a confirmatory test of the second sample collected at an approved laboratory of the employee's choice, and the fee payable to the employer for reimbursement of expenses concerning the test. Iowa Code section 730.5-7-i. The employer violated this section of the law.

It would be contrary to the spirit of chapter 730 to disqualify the claimant from receiving unemployment insurance benefits based on a drug test that is not in compliance with the law. Therefore, the employer did not establish that the claimant committed work-connected misconduct. As of May 16, 2010, the claimant is qualified to receive benefits.

DECISION:

The representative's June 10, 2010 decision (reference 01) is affirmed. The employer discharged the claimant, but did not establish that the claimant committed work-connected misconduct. As of May 16, 2010, the claimant is qualified to receive benefits, provided he meets all other eligibility requirements. The employer's account is subject to charge.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs