

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHARLES A COLEMAN
Claimant

APPEAL NO. 11A-UI-05993-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

AMERICOLD LOGISTICS LLC
Employer

OC: 04/03/11
Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Claimant filed a timely appeal from a representative's decision dated April 27, 2011, reference 01, which denied unemployment insurance benefits. After due notice, a telephone hearing was held on June 1, 2011 and reconvened on June 13, 2011. Mr. Coleman participated personally. The employer participated by Mr. Henry Oosterhouse, Plant Manager. Employer's Exhibit A was received into evidence.

ISSUE:

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

FINDINGS OF FACT:

Having considered all of the evidence in the record, the administrative law judge finds: Charles Coleman was employed by Americold Logistics, LLC from July 25, 2006 until March 25, 2011 when he was discharged from employment. Mr. Coleman worked as a full-time general laborer and was paid by the hour. His immediate supervisor was Pam Hanna.

Mr. Coleman was discharged from employment after he tested positive to controlled substances per a drug screen administered after an injury/accident. Mr. Coleman was aware of the company's drug testing policies. The policy provided drug testing of employees who are injured on the job. The employees are tested in an authorized medical facility following the required identification of samples and testing procedures. The claimant was contacted by a medical review officer to determine if there were any factors that skewed his positive test results. The claimant was informed of the positive test results by certified letter, return requested. The claimant did not avail himself of retesting of the split sample although he was informed of his ability to request retesting.

REASONING AND CONCLUSIONS OF LAW:

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.

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 claimant was aware of the company's drug testing policy and was aware that he could be discharged if he tested positive for any controlled substances. The employer complied with the provisions of the Iowa Drug Testing Law by having employees be tested by a certified medical facility and the test results confirmed by a certified medical laboratory. The employer followed the requirements of the law by having the claimant contacted by a medical review officer and by informing the claimant of his positive test results by certified letter, return requested. The claimant was also informed of his ability to request a test of the split sample but elected not to do so. The employer maintains a drug awareness program and that program was available to the claimant prior to his positive test result.

Claimant was found to be in violation of the employer's drug policy which is a terminable offense. Violation of a known policy is conduct not in the best interest of the employer. Claimant is, therefore, disqualified for benefits.

DECISION:

The representative's decision dated April 27, 2011, reference 01, is affirmed. The claimant is disqualified. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, and meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs