

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JASON M KING
Claimant

APPEAL NO. 08A-UI-03955-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

AG PROCESSING INC A COOPERATIVE
Employer

**OC: 02/24/08 R: 02
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Jason King filed a timely appeal from a representative's decision dated April 9, 2008, reference 02, that denied benefits. After due notice was issued, a hearing was held by telephone conference on May 7, 2008. Mr. King participated personally. Participating as a witness for the claimant was Deanna Clausen. The employer participated by Josh Burrows, attorney at Johnson & Associates, and witnesses Jeff Lampman, Sandy Mason, and Dr. Stephen Krack. Employer's Exhibits One through Four were received into evidence.

ISSUE:

Whether the claimant was discharged for misconduct in connection with the employment that disqualifies him from unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all the evidence in the record, the administrative law judge finds: Jason King was employed as a full-time utility operator by Ag Processing Inc a cooperative from March 2004 until February 27, 2008, when he was discharged from employment for failing to pass a random drug screen without exercising his right to have a second confirmatory test.

The final incident that prompted the discharge took place on February 14, 2008, when the claimant was administered and failed to pass a random drug screen given by the employer via a certified testing facility. Mr. King was aware of the company policy that required random drug testing for company employees. Individuals selected for random testing are selected by a third-party entity not under the control or direction of Ag Processing Inc. Proper testing procedures, chain of custody, maintenance of a split sample, and review by a certified medical review officer took place. The claimant was notified via certified letter and was given the opportunity to provide information to the medical review officer that might affect the positive test results. Although a split sample was maintained, as required, and the claimant was given the opportunity to have the sample re-tested, Mr. King did not exercise that right. The claimant was aware that under established written company policy he was subject to discharge if positive test results took place and were not varied by information provided to the medical review officer. Because the claimant's test results showed positive test levels well above cutoff levels that

would explain proximity exposure for two or more controlled substances, Mr. King was discharged from employment.

Mr. King contends that he may have inadvertently ingested controlled substances in a “soup” that was provided a former female friend. It is Mr. King’s belief that the same individual caused his random testing by alleging to the employer that Mr. King was using drugs. The claimant also maintains that he may have inadvertently ingested controlled substances when he was drinking to excess.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes Mr. King was discharged for misconduct in connection with the employment. It does.

The employer has the burden of proof in this matter. See Iowa Code section 96.6-2. Misconduct must be substantial in order to justify denial of unemployment insurance benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000).

Iowa Code section 730.5 provides the authority under which a private sector employer doing business in Iowa may conduct drug or alcohol testing of employees. In Eaton v. Iowa Employment Appeal Board, 602 N.W.2d 553 (Iowa 1999), the Supreme Court of Iowa considered the statute and held “an illegal drug test cannot provide a basis to render an employee ineligible for unemployment compensation benefits.” Thereafter, in Harrison v. Employment Appeal Board, 659 N.W.2d 581 (Iowa 2003), the Iowa supreme court held that where an employer had not complied with the statutory requirements for the drug test, the test could not serve as a basis for disqualifying the claimant for benefits. In the present case, the employer discharged the claimant for violating company policy by testing positive for controlled substances during a random drug screen. Mr. King’s name was drawn for testing by a third-party entity (IWFD). The evidence in the record establishes that the testing was conducted by a certified laboratory, that the results were reviewed by a medical review officer, that the claimant was aware of the policy and the possible of discharge for violation, and that the claimant was given an opportunity to provide extenuating information to the medical review officer that may have affected his positive test results. Mr. King was informed of the test results by certified letter and was given the opportunity to have the required split sample retested. The company maintains an employee assistance policy and employees are made aware of the policy as part of its drug policy. Because the employer’s drug testing policy, the testing, the notification, and the opportunity for retesting complied with Iowa Code section 730.5, the test results serve as a basis for disqualifying Mr. King for unemployment insurance benefits. Based upon the evidence in the record, the administrative law judge concludes that Mr. King was discharged for a disqualifying reason. Accordingly, the claimant is not eligible for unemployment insurance benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

The administrative law judge concludes that the claimant’s speculation that he had inadvertently ingested controlled substances strains credibility. The evidence establishes that the claimant’s name was selected for random testing by a third-party independent source that would not be privy to allegations about Mr. King to Ag Processors Inc.

DECISION:

The representative's decision dated April 9, 2008, reference 02, is hereby affirmed. The claimant was discharged under disqualifying conditions. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times the claimant's weekly benefit amount, provided he is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw