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

ARTHUR LEE
Claimant

ADVANCE SERVICES INC
Employer

APPEAL NO. 07A-UI-04536-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 03/25/07   R: 01
Claimant: Respondent (2)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The employer filed an appeal from the decision of a representative dated April 18, 2007, reference 01, which held the claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on May 21, 2007. Although notified, the claimant did not participate. The employer participated by Scott Hanson.

ISSUE:

The issues in this matter are whether the claimant was discharged for misconduct in connection with his work.

FINDINGS OF FACT:

The administrative law judge having heard the testimony and considered all of the evidence in the record, finds: The claimant last worked for this temporary employment service from March 19, 2007 until March 22, 2007 when he was discharged from employment. Mr. Lee was assigned to work at Siouxland Galvanizing Company as a production worker and was paid by the hour. On March 22, 2007, the claimant was given a drug test for cause when he was involved in an accident that caused injury. Mr. Lee was aware that he could be drug tested for cause. The testing was conducted by a certified laboratory providing all safeguards to the testing and review by a medical review officer. When the claimant's test results came back positive for marijuana metrobolites in his system, Mr. Lee did not dispute the results. The claimant was discharged per company policy for testing positive for controlled substances.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes based upon the evidence in the record that the employer has sustained its burden of proof in establishing that the claimant's discharge took place under disqualifying conditions. The record establishes that Mr. Lee was aware that he could be drug tested and agreed to testing for cause. The claimant was drug tested after he was involved in a work accident on or about March 22, 2007 that caused injury. The testing was conducted by a certified laboratory who followed all state guidelines with respect to drug testing. The claimant did not dispute the positive test results for marijuana metrobolite in his system.

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.

For the reasons stated herein, the administrative law judge finds that the claimant was discharged for misconduct in connection with his work. Benefits are denied.

DECISION:

The representative's decision dated April 18, 2007, reference 01, is hereby reversed. Claimant was discharged for misconduct. 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, providing the claimant is otherwise eligible.

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Terence P. Nice
Administrative Law Judge

_____
Decision Dated and Mailed

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