

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CODY D TROTTER**

Claimant

**APPEAL NO: 14A-UI-02060-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**QPS EMPLOYMENT GROUP INC**

Employer

**OC: 01/19/14**

**Claimant: Respondent (2-R)**

Section 96.5-2-a – Discharge  
871 IAC 24.32(1) – Definition of Misconduct  
Section 730.5 – Drug Testing  
Section 96.3-7 – Recovery of Overpayment

**STATEMENT OF THE CASE:**

The employer appealed a department decision dated February 10, 2014, reference 01, that held the claimant was not discharged for misconduct on January 16, 2014, and benefits are allowed. A telephone hearing was held on March 17, 2014. The claimant participated. Rhonda Hefter, HR Supervisor, Jason Carberry, and Ada Aguila, participated for the employer. Employer Exhibit 1 was received as evidence.

**ISSUE:**

Whether the claimant was discharged for misconduct in connection with employment.

**FINDINGS OF FACT:**

The administrative law judge having heard the witness testimony and having considered the evidence in the record finds: The claimant was hired on October 15, 2013, and last worked for the employer as a full-time packer at Priority Plastics on January 15, 2014. He received the employer policy that includes a provision for post-accident drug testing.

Claimant was injured at work on January 10 and the employer requested he submit to a post-accident drug test. Claimant consented. He was tested by a third party medical facility. An MRO reported to claimant on January 15 he tested positive for marijuana and the employer was also informed. The employer sent a certified letter to claimant on January 16 that he had the option to have the split sample urine test re-tested at his expense within a seven-day timeframe. Claimant was discharged from the employer effective January 16 subject to retesting. Claimant did not request retesting and he did not respond to the certified letter though he received it.

Claimant was not available when called for the hearing at the phone number he provided. He has received benefits totaling \$798 during a seven-week period ending March 8, 2014. The employer submitted documents at department fact finding. There is no evidence of claimant fraud or misrepresentation to obtain benefits.

## **REASONING AND CONCLUSIONS OF LAW:**

Iowa Code section 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 administrative law judge concludes employer has established claimant was discharged for misconduct in connection with employment on January 16, 2014 for violation of drug policy.

The employer had a written drug testing policy that it provided claimant. It had the post-accident cause to test claimant. Claimant consented. He violated the policy by testing positive for marijuana. He was properly informed by an MRO of the test result. The employer sent claimant a certified mail termination letter with a drug retesting option that he received. He did not elect retesting. The employer complied with the drug testing requisites of the law.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The administrative law judge further concludes claimant is overpaid unemployment benefits \$798 for a seven-week period ending March 8, 2014 due to the disqualification imposed in this decision. Although claimant committed no act of fraud or misrepresentation to receive the benefits, the issue whether he is obligated to repay it is remanded. The issue is whether the employer submission of documents is sufficient participation.

#### **DECISION:**

The department decision dated February 10, 2014, reference 01, is reversed. The claimant was discharged for misconduct on January 16, 2014. Benefits are denied until the claimant requalifies by working in and being paid wages for insured work equal to ten times his weekly benefit amount, provided the claimant is otherwise eligible. Claimant is overpaid benefits \$798, but the issue whether he should be relieved of the obligation to repay it is remanded to claims to determine whether the employer sufficiently participated at fact finding.

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Randy L. Stephenson  
Administrative Law Judge

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Decision Dated and Mailed

rls/pjs