

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**BOUASONE G SIHACHAK**  
Claimant

**APPEAL NO. 12A-UI-12788-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**REMBRANDT ENTERPRISES INC**  
Employer

**OC: 10/18/12  
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge for Misconduct  
730.5 – Drug Testing

**STATEMENT OF THE CASE:**

The claimant appealed a department representative's decision dated October 18, 2012, reference 01, that held he was discharged for misconduct on September 30, 2012. A hearing was held on November 27, 2012. The claimant did not participate. Sally Brecher, HR Manager, participated for the employer. Employer Exhibit One was received as evidence.

**ISSUE:**

The issue is whether the claimant was discharged for misconduct.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony of the employer, and having considered the evidence in the record, finds that: The claimant worked full time as a blender operator from May 10, 2011 to September 30, 2012. The claimant received the Drug & Alcohol policy of the employer that contains a provision he is subject to random drug testing.

The claimant was randomly selected by St. Lukes on September 28 for drug testing, and he tested positive for marijuana (THC) and amphetamine. The positive test was certified by a medical review authority and claimant was notified. for the positive drug test. The claimant was not sent a certified notice of the positive results and he was given an opportunity to have a second test from the same urine sample that he declined. The employer advised claimant on September 30 by certified letter he was terminated for violation of its drug/alcohol policy.

The claimant failed to respond to the hearing notice.

**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.

The administrative law judge has reviewed the records and files herein and concludes the employer established misconduct in the discharge of the claimant on September 30, 2012, for violation of the drug testing policy.

The employer complied with the drug testing requisites of Iowa Code section 730.5 for random testing. Claimant received the policy and knew he was subject to random testing. A third party made the random selection and claimant was independently notified of the positive test for illegal drugs. He declined the opportunity for a second confirmatory test from the same urine sample, and was terminated.

**DECISION:**

The decision of the representative dated October 18, 2012, reference 01, is affirmed. The claimant was discharged for misconduct in connection with employment on September 30, 2012. 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.

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Randy L. Stephenson  
Administrative Law Judge

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Decision Dated and Mailed

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