

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DOUGLAS E ESTRADA**  
Claimant

**APPEAL NO. 17A-UI-10751-S1-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SILGAN CONTAINERS MFG CORP**  
Employer

**OC: 09/17/17  
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Douglas Estrada (claimant) appealed a representative's October 12, 2017, decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits after his separation from employment with Silgan Containers Manufacturing (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for November 8, 2017. The claimant participated personally. The employer did not provide a telephone number where it could be reached and therefore, did not participate in the hearing.

**ISSUE:**

The issue is whether the claimant was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on August 29, 2016, as a full-time tech spray three. The claimant signed for receipt of the employer's handbook. In approximately July 2017, the claimant became a fork truck driver. The employer did not issue the claimant any warnings during his employment.

On September 6, 2017, the claimant was trying to fix a pallet of empty cans that had been stacked incorrectly by a previous worker when they fell. The employer decided to have the claimant drug tested. After work the employer told the claimant to drive himself to the health clinic to provide a urine sample. The health clinic asked the claimant what prescription drugs he was taking but did not ask him about over-the-counter drugs. The claimant then drove himself home after the testing.

The claimant was not scheduled to work on September 7, 2017. On September 8, 2017, the claimant called to request the day off. An employee in human resources told him he was suspended from work pending further notice. On September 11, 2017, an employee from the health clinic told the claimant he had tested positive for a substance and the employer would

contact him. The employee told the claimant he could, at his own expense, send a portion of the sample to another laboratory for further testing.

The claimant received a certified letter from the employer dated September 12, 2017. The letter said the claimant tested positive for a substance and the claimant was terminated. The letter did include the laboratory results. The letter did not offer the claimant treatment or further testing options. The employer charged the claimant over \$100.00 for the drug testing.

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

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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.

Iowa Admin. Code r. 871-24.32(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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The claimant was terminated for violating the employer's drug policy. The employer did not participate in the hearing. It is unknown whether the employer's drug policy is in compliance with the Iowa Code. Iowa Code Section 730.5(7)(i)(1) mandates that an employer, upon a confirmed positive drug or alcohol

test by a certified laboratory, notify the employee of the test results by certified mail and the right to obtain a confirmatory test before taking disciplinary action against an employee. The claimant did not receive a copy of his results. He does not know to what level he tested positive. The employer terminated him in the same letter as it provided the partial results.

Upon a positive drug screen, Iowa Code section 730.5(9)(g) requires, under certain circumstances, that an employer offer substance abuse evaluation and treatment to an employee the first time the employee has a positive drug test. The claimant was not offered any evaluation or treatment opportunities. Iowa Code section 730.5(6)(b) requires the employer to pay all actual costs for drug or alcohol testing of employees. In this case, the employer told the claimant to drive to and from the testing site and charged him for the actual testing. The Iowa Supreme Court has held that an employer may not “benefit from an unauthorized drug test by relying on it as a basis to disqualify an employee from unemployment compensation benefits.” *Eaton v. Iowa Employment Appeal Board*, 602 N.W.2d at 558.

The employer failed to give the claimant notice of the test results according to the strict and explicit statutory requirements and failed to allow him an opportunity for evaluation and treatment. As such, benefits are allowed, provided the claimant is otherwise eligible.

**DECISION:**

The representative’s October 12, 2017, decision (reference 01) is reversed. The employer has not met its burden of proof to establish job related misconduct. Benefits are allowed, provided claimant is otherwise eligible.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

bas/rvs