

ISSUE:

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on March 7, 2003. The claimant worked as a full-time over-the-road truck driver. The claimant quit this employment on September 10, 2004 because he accepted work with another employer.

The claimant applied to work for the employer again in October. On October 11, 2004, the claimant had a positive drug test and had to be reinstated by DOT. The employer agreed to rehire him if he went through treatment and agreed to submit to six drug tests for a period of time. The claimant understood that each of these random drug tests had to be negative. The employer rehired the claimant in November 2004 after the claimant's drug test came back negative and he agreed to complete a SAP evaluation.

After the claimant started working in November 2004, he was required to submit to a minimum of six drug tests and pass all of them. Between November 2004 and mid-July 2005, the claimant satisfactorily completed five drug tests.

The employer asked the claimant to submit to another drug test on or about July 25. The results of this test were positive. Department of Transportation Federal regulations prohibit a person to drive after this person has a positive drug test. The Federal regulations require an employee driver who has tested positive to go through an evaluation before the person can again drive. The employer's policy informs employees that if they have a second positive drug test result, the employer will discharge the employee.

When the claimant's July 2005 test came back positive, he received an opportunity to have the split sample tested. The claimant declined and told the employer that he had screwed up. The employer discharged the claimant on July 26 because he was no longer able to drive and decided he would not again go through an evaluation.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if he voluntarily quits employment without good cause or an employer discharges the claimant for reasons constituting work-connected misconduct. Iowa Code §§96.5-1, 2-a. When a claimant quits for other employment, he is not disqualified from receiving benefits and the employer's account will not be charged. Iowa Code §96.5-1-a.

In this case there are two employment separations. The first occurred on September 10, 2004, when the claimant left for other employment. Since the claimant quit for another job, the employer's account will not be charged for wage credits the claimant earned from April 1 through September 10, 2004.

The second employment separation occurred on July 26, 2005. The only reason for the claimant's discharge was a positive drug test, which was the second positive test in ten months. The Iowa Supreme Court has ruled that an employer cannot establish disqualifying misconduct based on a drug test performed in violation of Iowa's drug testing laws. Harrison v. Employment

Appeal Board, 659 N.W.2d 581 (Iowa 2003); Eaton v. Employment Appeal Board, 602 N.W.2d 553, 558 (Iowa 1999). As the court in Eaton stated, "It would be contrary to the spirit of chapter 730 to allow an employer to benefit from an unauthorized drug test by relying on it as a basis to disqualify an employee from unemployment compensation benefits." Eaton, 602 N.W.2d at 558. However, when a drug test administered to a claimant and the employer's drug testing policy is required pursuant to Federal statutes, Federal regulations, or orders issued pursuant to Federal law, the Iowa drug testing policy at Iowa Code §730.5 does not apply. See Iowa Code §730.5(2) and 49 C.F.R. 382.109 for Federal rules preempting state rules if compliance with the state requirement is an obstacle to the accomplishment and execution of the requirements of the Federal rules. Iowa Code §730.5 has stricter requirements for a drug test than the Federal rules at 49 C.F.R. Subtitle A, Part 40. In this case the claimant was an over-the-road driver for the employer, which required him to possess a commercial driver's license that is subject to the Federal requirements for drug testing. See 49 U.S.C. 31301 et seq. Included in the required drug tests are random tests.

A medical review officer personally contacted the claimant and informed him of the positive drug test results and the right to a confirmatory test, which the claimant declined. Since the employer's drug testing policy complies with Federal requirements at 49 C.F.R. Subtitle A, Part 40, it is not necessary for the claimant's drug test to comply with Iowa Code §730.5 including notice of a positive drug test in writing by certified mail, return receipt. The claimant's drug test complied with Federal requirements and the drug test was positive. For unemployment insurance purposes, the evidence establishes the employer discharged the claimant for work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of August 14, 2005.

**DECISION:**

The representative's September 22, 2005 decision (reference 01) is reversed. The employer discharged the claimant for reasons that constitute work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of August 14, 2005. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged.

dlw/pjs