

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MACKENZIE S DREESZEN
Claimant

EDWARD D JONES & CO LP
Employer

APPEAL 19A-UI-09267-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 10/20/19
Claimant: Appellant (2)

Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

On November 23, 2019, Mackenzie S. Dreeszen (claimant) filed an appeal from the November 12, 2019, reference 01, unemployment insurance decision that denied benefits based upon the determination Edward D. Jones & Co. LP (employer) discharged her for violation of a known company policy. The parties were properly notified about the hearing. A telephone hearing was held on December 16, 2019. The claimant participated personally. The employer participated through Sharon Fallon, Senior Associate Relations Specialist, and was represented by Jennifer Chambers, Human Resource Specialist. The Claimant's Exhibits A through C and the Employer's Exhibits 1 through 4 were admitted without objection.

ISSUE:

Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full-time as a Branch Office Administrator beginning on July 22, 2019, and her last day worked was October 7, 2019. The employer has approximately 40,000 employees. It has an Alcohol and Drug Testing Policy that has been revised on multiple occasions. The policy that was in effect at the time of the claimant's separation was the version revised in August 2019. (Exhibit C) The claimant received a copy of the policy and was on notice that she could be subject to drug or alcohol testing based on a reasonable suspicion.

On October 7, Brian Herbal, Financial Advisor contacted the corporate office to report that he believed the claimant was under the influence of drugs or alcohol as she was slurring her words, having difficulty forming cohesive thoughts, and going to her car for no reason. The employer elected to send the claimant for a drug screen per its policy. The claimant went to a third party vendor who collected a split sample of urine. The sample came back positive for a blood alcohol level of 0.04. According to the employer's policy, that is considered impaired and grounds for termination. The medical review officer and the employer notified the claimant verbally of the positive test and her right to have the split sample tested. The employer did not

send the claimant this information in a certified letter. She was discharged on October 26 due to violation of the employer's drug and alcohol policy.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason. Benefits are allowed.

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 proving disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). Whether an employee violated an employer's policies is a different issue from whether the employee is disqualified for misconduct for purposes of unemployment insurance benefits. See *Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661, 665 (Iowa 2000) ("Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of benefits." (Quoting *Reigelsberger*, 500 N.W.2d at 66.)). A violation of the employer's policy is not necessarily disqualifying misconduct

even if the employer was fully within its rights to impose discipline up to or including discharge for the incident under its policy.

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 Emp’t Appeal Bd.*, 602 N.W.2d 553, 557, 558 (Iowa 1999). Testing under Iowa Code section 730.5(4) allows employers to test employees for drugs and/or alcohol but requires the employer “adhere to the requirements . . . concerning the conduct of such testing and the use and disposition of the results.” A certified letter is required under Iowa Code section 730.5 to adequately convey to the employee the importance of the notice which cannot be conveyed by orally. *Sims v. HCI Holding Corp.*, 759 N.W.2d 333, 340 (Iowa 2009).

In this case, the employer had reasonable suspicion the claimant was under the influence and was within its rights to test her. The test came back positive and it was within its rights to terminate her employment. However, the employer failed to provide her notice of the results and the right to have a split sample tested via certified letter return receipt requested as required by the statute. Thus, the employer cannot use the results of the drug screen as a basis for disqualification from unemployment insurance benefits.

DECISION:

The November 12, 2019, reference 01, unemployment insurance decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.



Stephanie R. Callahan
Administrative Law Judge

December 23, 2019
Decision Dated and Mailed

src/scn