

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RICKY E POWELL
Claimant

APPEAL NO. 09A-UI-09781-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

KAISER CONTRACT CLEANING
Employer

OC: 05/31/09
Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated June 30, 2009, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on July 23, 2009. The parties were properly notified about the hearing. The claimant participated in the hearing. Scott Laydd participated in the hearing on behalf of the employer.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked for the employer as lead person from November 8, 2003, to May 26, 2009. The claimant was informed and understood that under the employer's work rules, employees were required to submit to a drug test under certain circumstances, including when an employee suffers a workers' compensation injury, and were subject to termination if they tested positive for drugs.

Pursuant to the policy, the claimant was required to submit to a drug test on May 20, 2009. A urine sample was taken from the claimant and analyzed by a certified laboratory. The analysis disclosed the presence of amphetamines in the claimant's system. The claimant was discharged by the employer on May 26, 2009, after it received the results of the drug test.

There is no evidence that the employer notified the claimant in writing by certified mail, return receipt requested, (1) of the results of the test, (2) his right to request and obtain a confirmatory test of the second sample collected at an approved laboratory of his choice, (3) and the fee payable by the employee to the employer for reimbursement of expenses concerning the test.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code section 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

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.

At a minimum, the testing procedure violated Iowa Code section 730.5-7-i, which requires that an employer notified the employee in writing by certified mail, return receipt requested, (1) of the results of the test, (2) his right to request and obtain a confirmatory test of the second sample collected at an approved laboratory of his choice, (3) and the fee payable by the employee to the employer for reimbursement of expenses concerning the test.

The claimant, therefore, is not subject to disqualification because the testing was in violation of Iowa Code section 730.5-7-i.

DECISION:

The unemployment insurance decision dated June 30, 2009, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs