

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**BLAIR K MEADER**

Claimant

**APPEAL NO. 12A-UI-11418-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WAL-MART STORES INC**

Employer

**OC: 08/26/12**

**Claimant: Respondent (1)**

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

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the September 14, 2012, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on October 17, 2012. Claimant Blair Meader did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate. Assistant Manager Courtney Hilton represented the employer. Exhibits One through Seven were received into evidence.

**ISSUE:**

Whether the claimant was discharged for misconduct in connection with the employment that disqualifies the claimant for unemployment insurance benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Blair Meader was employed by Wal-Mart in Windsor Heights as an assembler until August 17, 2012, when the employer's corporate office issued the directive to discharge Mr. Meader in response to a positive drug test. Assistant Manager James Joyce was Mr. Meader's immediate supervisor. On August 13, 2012, Mr. Meader got hurt in the course of the employment and requested medical treatment. Mr. Joyce requested that Mr. Meader submit to a drug test in connection with receiving medical treatment. The employer witness at the appeal hearing did not know whether Mr. Blair had any training in drug testing protocol or in discerning whether a person is under the influence of drugs or alcohol. Mr. Meader provided a urine specimen at Iowa Methodist Occupational Health in West Des Moines. The specimen was collected as a split sample. One portion of the split sample was tested at a lab in Kansas. The employer witness at the appeal hearing did not know whether the medical review officer spoke to Mr. Meader about what drugs, legitimate or illegitimate, he might have used that would impact on the drug test result. On August 16, 2012, the employer received a drug test report that indicated the urine specimen had tested positive for marijuana metabolites. The employer did not mail notice to Mr. Meader, by certified mail or otherwise, of the drug test result or of his right to have the second portion of the split sample tested. The employer discharged Mr. Meader from the employment after receiving the drug test result.

## 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.

871 IAC 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.

The employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. See 871 IAC 24.32(4). When it is in a party's power to produce more direct and satisfactory evidence than is actually produced, it may fairly be inferred that the more direct evidence will expose deficiencies in that party's case. See Crosser v. Iowa Dept. of Public Safety, 240 N.W.2d 682 (Iowa 1976).

Iowa Code Section 730.5 provides the authority under which a private sector employer doing business in Iowa may conduct drug or alcohol testing of employees. In Eaton v Employment Appeal Board, 602 N.W.2d 553 (Iowa 1999), the Supreme Court of Iowa considered the statute and held "that an illegal drug test cannot provide a basis to render an employee ineligible for unemployment compensation benefits." Thereafter, in Harrison v. Employment Appeal Board,

659 N.W.2d 581 (Iowa 2003), the Iowa Supreme Court held that where an employer had not complied with the statutory notice requirements associated with drug testing, the test could not serve as a basis for disqualifying a claimant for benefits.

Under the above-referenced appellate decisions, the employer's drug testing of Mr. Meader was not authorized under Iowa Code section 730.5 and cannot serve as the basis for disqualifying Mr. Meader for unemployment insurance benefits. The evidence fails to establish that the person requesting the drug test had the minimum training required under Iowa Code section 730.5(9)(h). The evidence fails to establish that the accident that prompted the request for medical treatment could have required the employer to file a worker's compensation first report of injury under Iowa Code chapter 88. See Iowa Code section 730.5(8)(f). The evidence fails to establish that a medical review officer spoke to Mr. Meader, or attempted to speak with Mr. Meader, prior to reporting the positive drug test to the employer. See Iowa Code section 730.5(7)(c)(2). The evidence fails to establish that the employer mailed notice to the claimant, via certified mail, of the positive test result and notice of the claimant's right to have the second portion of the split sample tested. See Iowa Code section 730.5(7)(i)(1).

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Meader was discharged for no disqualifying reason. Accordingly, Mr. Meader is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged.

**DECISION:**

The Agency representative's September 14, 2012, reference 01, decision is affirmed. The claimant was discharged for no disqualifying reason. The claimant is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/pjs