

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TIMOTHY B BAILEY
Claimant

APPEAL NO. 07A-UI-07154-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MILLARD REFRIGERATED SERVICES INC
Employer

**OC: 06/24/07 R: 01
Claimant: Respondent (2)**

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The employer, Millard Refrigerated Services, Inc. (Millard), filed an appeal from a decision dated July 16, 2007, reference 01. The decision allowed benefits to the claimant, Timothy Bailey. After due notice was issued, a hearing was held by telephone conference call on August 7, 2007. The claimant did not provide a telephone number where he could be contacted and did not participate. The employer participated by General Manager Warren Gregg.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Timothy Bailey was employed by Millard from March 20, 2006 until June 14, 2007, as a full-time fork lift operator. He received a copy of the employee handbook at the time of his hire. The drug policy provides for testing of any employee who is involved in an accident during work hours, and for discharge to occur for anyone who tests positive for controlled substances.

Mr. Bailey had an accident at work on June 11, 2007, and was sent to the Marion Health Center for treatment and gave a sample for a drug test at that time. An initial test was performed at the center and was positive for marijuana. The claimant returned to work and told General Manager Warren Gregg he had tested positive and admitted to having smoke marijuana. He was suspended pending the results of a second test which was sent to a laboratory for analysis. The results were received on June 14, 2007, and the claimant was discharged for violation of the drug policy.

Timothy Bailey filed a claim for unemployment benefits with an effective date of June 24, 2007. The records of Iowa Workforce Development indicate no benefits have been paid as of the date of the hearing.

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 claimant admitted to the employer that the test results indicating positive for marijuana was accurate as he had smoked marijuana. This is a violation of the drug policy. Being under the influence of controlled substances while in the workplace is conduct not in the best interests of the employer and the claimant is disqualified.

DECISION:

The representative's decision of July 16, 2007, reference 01, is reversed. Timothy Bailey is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount, provided he is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/css