

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRADLEY C JONES

Claimant

APPEAL NO: 10A-UI-13681-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SILGAN CONTAINERS MFG CORP

Employer

OC: 09/05/10

Claimant: Respondent (1)

Section 96.5-2-a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's September 30, 2010 determination (reference 01) that held the claimant qualified to receive benefits and the employer's account subject to charge because the claimant had been discharged for nondisqualifying reasons. A telephone hearing was held November 22, 2010. The claimant participated at hearing. Karla Bell, a human resource representative, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge finds the claimant qualified to receive benefits.

ISSUE:

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

FINDINGS OF FACT:

The claimant started working for the employer in September 2003. Prior to August 12, 2010, the claimant's job was not in jeopardy. The employer's drug and alcohol policy does not tolerate the use of drugs and alcohol at work nor can an employee report to work under the influence of drugs or alcohol.

The employee who worked after the claimant found drug paraphernalia, a pipe, on the forklift the claimant operated. On August 13, when the claimant reported to work, he denied the drug paraphernalia found the day before was his. Since the paraphernalia was on the forklift truck the claimant operated, the employer asked him to take a drug test. Before the claimant took the test, he told the employer it would probably come back positive because he had smoked marijuana a couple of weeks earlier when he was on vacation.

The employer took the claimant to a laboratory on August 13. On August 18, a medical review officer contacted the claimant to see if he took any medication that could result in a positive drug test for marijuana. The claimant was not taking any medication.

On August 19 when the employer learned about the result of the drug test, the employer discharged the claimant for violating the employer's drug and alcohol test. The employer did not give the claimant an opportunity to have the split sample tested.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

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.

Iowa Code § 730.5-9-a states an employer can take disciplinary action against an employee including termination of employment, upon receipt of "a confirmed positive test result for drugs or alcohol." However, for a person to be terminated for a failed drug test, the law requires an employer to notify an employee in writing by certified mail, return receipt requested, of the results of the test, the right to request and obtain a confirmatory test of the second sample collected at an approved laboratory of the employee's choice, and the fee payable to the employer for reimbursement of expenses concerning the test. Iowa Code § 730.5-7-i. The employer violated this section of the law.

It would be contrary to the spirit of chapter 730 to disqualify the claimant from receiving unemployment insurance benefits based on a drug test that is not in compliance with the law. Therefore, as of September 5, 2010, the claimant is qualified to receive benefits.

DECISION:

The representative's September 30, 2010 determination (reference 01) is affirmed. The employer discharged the claimant for reasons that do not establish that he committed work-connected misconduct. As of September 5, 2010, the claimant is qualified to receive benefits, provided he meets all other eligibility requirements. The employer's account is subject to charge.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css