

FINDINGS OF FACT:

The claimant started working for the employer on June 2, 1997. The claimant worked as a full-time tire builder. The employer's written drug policy informs employees that if they test positive for a drug, they will be discharged. The claimant understood the policy.

On August 25, 2005, the claimant reported a work-related injury. In accordance with the employer's written policy, employees are required to submit to a drug test when they have been involved in a work-related injury. The claimant submitted to the test on August 25, 2005. The initial test was not negative. The employer sent the sample to a clinic for further testing.

On September 8, the employer received information that the claimant had tested positive for amphetamine. The employer's company doctor, who is the medical review officer, talked to the claimant about the results of the drug test. The claimant was on medication for a rash that the claimant believed was caused by the work he did. The employer does not know what the claimant told the doctor, but assumed the doctor knew about the prescription medication the claimant was taking at that time. After the claimant talked to the medical review officer, the employer received information that the claimant tested positive for one of the substances tested. The employer sent the claimant a letter by regular and certified mail that he had the right to have the split sample tested. The claimant did not have the second test run.

The employer concluded the claimant violated the employer's drug policy and discharged the claimant on September 8, 2005.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him 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 that is based on a drug or alcohol test performed in violation of Iowa's drug and alcohol testing laws. Eaton v. Iowa Employment Appeal Board, 602 N.W.2d 553, 558 (Iowa 1999). The claimant argued that the employer's doctor did not talk to him about the prescribed medication he was taking. The medical review officer, the employer's doctor, did not participate at the hearing. The employer did not know what information the doctor reviewed, but assumed the employer's doctor knew about the claimant's prescribed medication and considered this fact when deciding the claimant had a positive drug test. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to

misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

The claimant's testimony as to what happened when the medical review officer contacted him must be given more weight than the employer's assumptions as to what the medical review officer said to the claimant since the medical review officer did not participate in the hearing. The evidence does not establish the employer complied with the requirements of Iowa Code §730.5(7)c(2). Under Eaton, the employer has not established that the employer met all the requirements of Iowa's drug testing laws. Therefore, the employer has not met its burden in showing the claimant committed work-connected misconduct. As of September 18, 2005, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The representative's October 7, 2005 decision (reference 01) is reversed. The employer did not establish that the claimant committed work-connected misconduct. As of September 18, 2005, the claimant is qualified to receive unemployment insurance benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

dlw/tjc