

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JERROLD L HALEY
Claimant

APPEAL NO. 13A-UI-04019-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

AVENTURE STAFFING & PROFESSIONAL
Employer

OC: 03/03/13
Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Claimant filed a timely appeal from a representative's decision dated March 29, 2013, reference 01, which denied unemployment insurance benefits. After due notice, a telephone hearing was held on May 1, 2013. Claimant participated. The employer participated by Ms. Cyd Hall, Risk Manager. Employer's Exhibits One, Two and Three and Claimant's Exhibit A were received into evidence.

ISSUE:

The issue in this matter is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Jerrold Haley was employed by Aventure Staffing from January 23, 2012. Mr. Haley was discharged after he made application to be assigned to a client company of Aventure Staffing that required pre-employment drug testing. Mr. Haley was aware that he would be drug tested. The employer followed the requirements of section 730.5 for obtaining a sample, identifying it, sending it to a certified laboratory for split sample testing. The company also maintained a written drug policy identifying the substances to be tested for. Prior to the determination as to whether the test would be considered to be positive, Mr. Haley was contacted by a medical review officer of the testing facility. The claimant was informed of the positive test results by certified letter, return receipt requested and was notified of his right to request testing of the split sample within seven days, that the testing fee to be reimbursable by the employer if the split sample was negative. Mr. Haley did not exercise the right to have the positive test results confirmed.

It is Mr. Haley's position that his taking of prescription hydrocodone had caused the positive test results for cocaine, although the claimant had not used the illegal substance. (See Claimant's Exhibit A).

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits. It does.

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. 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).

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 the present case the employer required pre-employment testing for Mr. Haley and the claimant provided a sample to be tested by a certified laboratory. The evidence in the record establishes that the employer followed the required provisions of section 730.5 regarding written policy of the method of the sample that was taken, its identifications, split sample and testing. The evidence also establishes that Mr. Haley was contacted by a medical review officer prior to the test results being forwarded. The claimant was informed by a certified letter, return receipt requested of the positive test results and his right to have the split sample tested. Mr. Haley did not avail himself of the right to have the split sample retested and to provide any additional information at that

time that may have been helpful for the testing laboratory to determine whether any other medications had affected or skewed the claimant's positive test results.

Because the evidence in the record establishes that the employer has followed the requirements of section 730.5 and the claimant did not exercise his right to dispute the positive test results, the administrative law judge concludes that the employer has sustained its burden of proof in establishing that Mr. Haley's discharge was disqualifying. Unemployment insurance benefits are withheld.

DECISION:

The representative's decision dated March 29, 2013, reference 01, is affirmed. The claimant is disqualified. Unemployment insurance benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount and is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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