

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CHAZARAE D DOCK**  
Claimant

**APPEAL NO: 12A-UI-04250-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TOYOTA OF DES MOINES**  
Employer

**OC: 03/18/12**  
**Claimant: Appellant (1)**

Iowa Code § 96.5(2)a – Discharge

**PROCEDURAL STATEMENT OF THE CASE:**

The claimant appealed a representative's April 12, 2012 determination (reference 01) that disqualified him from receiving benefits and held the employer's account exempt from charge because the claimant had been discharged for disqualifying reasons. The claimant participated in the hearing. Charles Bradley testified on the claimant's behalf. Steven Shindler, attorney at law, represented the employer. Dee Kading, the human resource director, and Ron Short, the service manager, appeared on the employer's behalf. During the hearing, Employer Exhibits One and Two were offered and admitted as evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is not qualified to receive benefits.

**ISSUE:**

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

**FINDINGS OF FACT:**

The claimant started working for the employer in July 2009. He worked full-time as a detail and dent removal technician. When the claimant started his employment, he received a copy of an employee policy handbook. The handbook informs employees they are subject to random drug tests, employees are prohibited from using or being under the influence of illegal drugs, and violation of the policy can result in termination, even for a first offense. (Employer Exhibit One – pg 13.)

The employer's controlled substance abuse policy implemented in June 2011 informed employees that if they have a positive test, they will be terminated. When the employer asked the claimant to submit to a random drug test on March 14, 2012, the claimant signed a form indicating in part that he had received the employer's substance abuse policy.

The employer does not randomly select employees for random drug test. The employer has hired another company who uses a random selection program in selecting employees for the employer's random drug tests. The claimant was randomly chosen to have a drug test on March 14, 2012. He gave a sample for the drug test that same day. The claimant's sample was

tested by a laboratory. A medical review officer, Dr. Cooper, contacted the claimant on March 19, 2012, and told the claimant he had tested positive for one of the tested controlled substances, marijuana. (Employer Exhibit Two.) The claimant received information that he could have a second test done on the sample he provided. After talking to a physician, the claimant decided he would not pay for a second test, because it would also be positive.

On March 19, 2012, the employer discharged the claimant for violating the employer's drug and alcohol policy.

#### **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 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." The law also 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 medical review officer satisfied this requirement on the employer's behalf.

The claimant knew and understood he could have a second test done of the March 14, 2012 sample. He decided he would not waste his money on a test that would still show a positive test result. Even though the claimant asserted he did not know he could be discharged for one positive drug test, the record indicates the employer's controlled substance abuse policy informs employees they will be discharged if they have a positive drug test. The policy further informs employees that they may seek treatment at their own expense and may reapply for employment after completing treatment or rehabilitation.

The evidence establishes that the employer complied with Iowa's drug testing laws. The employer discharged the claimant for reasons constituting work-connected misconduct. As of March 18, 2012, the claimant is not qualified to receive benefits.

**DECISION:**

The representative's April 12, 2012, determination (reference 01) is affirmed. The employer discharged the claimant for reasons constituting work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of March 18, 2012. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/kjw