

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**MOSES F TARPEH**  
Claimant

**TPI IOWA LLC**  
Employer

**APPEAL NO. 18A-UI-09431-B2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 08/19/18**  
**Claimant: Appellant (1)**

Iowa Code § 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Claimant filed an appeal from a decision of a representative dated September 6, 2018, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on September 27, 2018. Claimant participated. Employer failed to answer the phone when called and did not participate.

**ISSUES:**

Whether claimant was discharged for misconduct?

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: As claimant was the only participant in the hearing, all findings of fact are derived from claimant's testimony. Claimant last worked for employer on June 22, 2018. Employer discharged claimant after that date because claimant tested positive for marijuana on a random drug test.

Claimant was informed on June 22, 2018 that he was to come in for a random UA test. Claimant did drop his UA. Claimant stated that he was informed by the independent testing agency of his positive result on the test sometime after the test. Said result was sent to claimant via certified mail and explained to claimant that he had a right to have a split sample sent off to another lab for independent testing.

Claimant stated that he didn't receive the certified mail letter until after his time had expired to request the split sample. Claimant explained that although he kept his Newton area address, and that was the address his employer had for him, claimant had been staying in Des Moines, and hadn't received the document in a timely basis, so he couldn't request the split sample.

Claimant stated that he does not smoke marijuana.

## REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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.

Iowa Admin. Code r. 871-24.32(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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

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. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982), Iowa Code § 96.5-2-a.

Code section 730.5(8) sets forth the circumstances under which an employer may test employees for the presence of drugs. One of those conditions is a random selection for testing. Claimant was randomly selected for unannounced testing and was not tested as part of drug rehabilitation. See section 730.5(8) a, b. Iowa Code § 730.5(7)(i)(1) mandates that an employer, upon a confirmed positive drug or alcohol test by a certified laboratory, notify the employee of the test results by certified mail and the right to obtain a confirmatory test before taking disciplinary action against an employee.

Iowa law requires substantial rather than strict compliance with the requirements of Iowa Code §730.5. Those directives which must be complied with include, "mandating written notice by certified mail of (1) any positive drug test, (2) the employee's right to obtain a confirmatory test, and (3) the fee payable by the employee to the employer for reimbursement of the expense of the test. Iowa Code §730.5(7)(i)(1). *Sims v. NCI Holding Corp.*, 759 N.W.2d 333, 338 (Iowa 2009). The Iowa Supreme Court has held that an employer may not "benefit from an unauthorized drug test by relying on it as a basis to disqualify an employee from unemployment compensation benefits." *Eaton v. Iowa Employment Appeal Board*, 602 N.W.2d 553, 557, 558 (Iowa 1999).

The last incident, which brought about the discharge constitutes misconduct because employer did substantially comply with Iowa Code §730.5. Claimant was tested as a part of random testing. His positive test was reported to him through certified mail, as well as his options for moving ahead with a split sampling and outside testing. Employer sent this information to the address for claimant that they had on file. Claimant did not update his address such that he could receive the information in a timely basis. Employer's actions did not amount to denying claimant of a reasonable opportunity to protest the result. Benefits are denied

**DECISION:**

The decision of the representative dated September 6, 2018, reference 01, is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

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Blair A. Bennett  
Administrative Law Judge

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Decision Dated and Mailed

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