

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 – EI

MARCELINO ANDRADE
Claimant

APPEAL NO: 13A-UI-05895-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SWIFT PORK COMPANY
Employer

OC: 04/28/13
Claimant: Appellant (2)

Iowa Code § 96.5(2)a- Discharge

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's May 14, 2013 determination (reference 01) that disqualified him from receiving benefits and held the employer's account exempt from charge. The claimant participated in the hearing. Luis Menza, the human resource supervisor, appeared on the employer's behalf. Patricia Vargas interpreted the hearing. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is 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 April 2008. He worked full time. The claimant wanted to be able to operate a forklift. To obtain an operating license, the claimant had to take a drug test. The employer's policy informs employees that if they violate the employer's drug and alcohol policy by having a positive drug test result, they will be discharged.

On April 18, 2013, the claimant submitted to a drug test by providing a urine sample. The employer's preliminary test result indicated the claimant had a positive drug test result. The urine sample was then sent to a certified laboratory to analyze. The employer suspended the claimant on April 18. The employer verbally told the claimant his options if the laboratory confirmed that he had a positive drug test.

On April 29, 2013, the laboratory informed the employer that claimant had a positive drug test. The employer does not know if a medical review officer talked to the claimant or not. A medical review officer from the laboratory tries three times to contact the person tested. If the medical review officer is not successful in contacting the person by phone, a letter is sent to the person. The claimant did not talk to a medical review officer. On April 29, 2013, the employer discharged the claimant for violating the employer's drug and alcohol policy.

The claimant filed a grievance. At the grievance, the claimant informed the employer he took vitamins and amoxicillin that he obtained in Mexico. Mexico does not require a prescription for amoxicillin. The claimant also brought the employer a bag of different substances and prescriptions he takes after he was discharged.

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. 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. The employer testified that a certified letter was not sent to the claimant.

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 April 28, 2013, the claimant is qualified to receive benefits.

DECISION:

The representative's May 14, 2013 determination (reference 01) is reversed. The employer discharged the claimant for business reasons, but did not establish that the claimant committed work-connected misconduct. As of April 28, 2013, 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/pjs