

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JOSHUA E WILSON
Claimant

ALLSTEEL INC
Employer

APPEAL 15A-UI-07346-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 05/31/15
Claimant: Respondent (1)**

Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The employer filed an appeal from the June 16, 2015, (reference 01) unemployment insurance decision that allowed benefits based upon the determination it did not furnish sufficient evidence to show the claimant was discharged for disqualifying misconduct. The parties were properly notified about the hearing. A telephone hearing was held on July 30, 2015. Claimant Joshua Wilson participated on his own behalf. Employer Allsteel, Inc. participated through MCR Business Partner Cassie Barber and was represented by Sandra Linsin from Employer's Edge. Employer's Exhibits 1 through 7 were received and admitted into the file with no objection.

ISSUE:

Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full time as a work cell operator beginning November 10, 2003, and was separated from employment on June 1, 2015, when he was terminated. The claimant failed a drug test in December 2014. At that time, the employer verbally reviewed its policies with the claimant notifying him that he had the right to request the second sample be tested at another lab at his own expense. He received treatment and, as a condition of his return to employment, he was subjected to random drug testing every month for two years.

In May 2015, the claimant was selected for two drug tests. His second drug test that month came back positive. He received a phone call from the employer notifying him of his termination. The employer did not send him a certified letter, return receipt requested, notifying him of the determination and explaining his rights to have a second drug test at his own expense.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

Iowa Code § 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.

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).

The employer has the burden of proving disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The Iowa Code outlines the technical requirements a company must meet when conducting a drug test in a private sector drug-free workplace. Iowa Code § 730.5. It specifically mandates that, upon a confirmed positive drug or alcohol test by a certified laboratory, the employer notify the employee by certified mail, return receipt requested, of the test results, the employee's right to have a confirmatory test performed, and that the fee is by payable by the employee. Iowa Code § 730.5(7)(i)(1). 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 Emp't Appeal Bd.*, 602 N.W.2d 553, 557, 558 (Iowa 1999). Failing to follow the technical requirements outlined in Iowa law can deem the drug test unauthorized. *Id.*

In this case, the employer failed to follow the technical requirements of Iowa Code § 730.5 when it did not notify the claimant in writing certified mail, return receipt requested, of the outcome of the test and his right to have a second test done at his own expense. The employer stated it notified the claimant of the test via telephone. The employer explained the policy outlined the claimant's rights which were reviewed with him after the first positive drug test and he did not

proactively request the second sample be tested after the second failed drug test. However, the statute clearly states the employer “shall” send the letter. The employer did not comply with this mandate. The employer cannot use the results of the drug screen as a basis for disqualification from benefits and benefits are allowed.

DECISION:

The June 16, 2015, (reference 01) decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

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