

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MARIAH GIBBONS
Claimant

HAIR BIZ LLC
Employer

APPEAL 19A-UI-06365-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 06/30/19
Claimant: Respondent (1)

Iowa Code § 96.5-2-a – Discharge for Misconduct
Iowa Code § 96.3-7 – Overpayment

STATEMENT OF THE CASE:

Hair Biz (employer) appealed a representative's August 5, 2019, decision (reference 01) that concluded Mariah Gibbons (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on September 4, 2019. The claimant participated personally. The employer participated by Lisa King, Owner. The administrative law judge took official notice of the administrative record, including fact-finding documents.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on March 10, 2016, as a part-time hairstylist. She previously worked for the employer from March 2011, to March 2014. During the previous period of employment, the claimant signed that she read through the employer's handbook with the manager. The employer's handbook did not have a drug policy. It did state that the workplace was drug and alcohol free. The employer had one copy of the handbook and it was kept in a storage cabinet behind the front desk.

The employer did not issue the claimant any written warnings during her employment. Around the end of May 2019, the owner told the claimant she had to go to rehab, quit, or be fired. Later that day, the owner apologized to the claimant for accusing the claimant of taking drugs.

On June 29, 2019, an old friend of the claimant stopped by the salon talked to the claimant and left. The claimant felt that the old friend was not a good person for her to spend time with. Two hours later, the owner brought the claimant a drug test that the owner purchased at a drug store. The employer told the claimant to take the test in the bathroom or quit.

The claimant told the owner she just went to the bathroom and would need time to drink water before she could perform the test. The claimant started drinking water. After about ten minutes, the owner said, "How about I make this easier for you. How about I fire you." The owner terminated the claimant for being uncooperative in taking a drug test on June 29, 2019.

The claimant filed for unemployment insurance benefits with an effective date of June 30, 2019. The employer participated personally at the fact finding interview on July 30, 2019, by Lisa King and other employees.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

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).

Iowa Admin. Code r. 871-24.32(4) provides:

(4) Report required. The claimant's statement and employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

The employer has the burden of proving disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). Iowa Code Section 730.5(9) requires that a written drug screen policy be provided to every employee subject to testing. Iowa Code Section 730.5(9)e requires that an employer establish in its written policy a standard for alcohol concentration that violates the policy and that concentration shall not be less than .02. Iowa

Code Section 730.5(9)b requires that an employer's policy provide uniform requirements for what disciplinary actions an employer shall take against an employee upon the refusal of to provide a testing sample. Iowa Code Section 730.5(7)c(2) requires that an employer provide employees and prospective employees a list of drugs to be tested.

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 at 558.

An employer may discharge an employee for any number of reasons or no reason at all, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, the employer incurs potential liability for unemployment insurance benefits related to that separation. In this case, the employer did not provide the claimant with the proper notifications as required by Iowa law. It was attempting to administer a drug test without a drug testing policy. The employer subsequently terminated the claimant for being uncooperative. The employer did not provide sufficient evidence of job-related misconduct. It did not meet its burden of proof to show misconduct. Benefits are allowed provided the claimant is otherwise eligible.

DECISION:

The representative's August 5, 2019, decision (reference 01) is affirmed. The claimant was discharged. Misconduct has not been established. Benefits are allowed provided the claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/rvs