

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ORANGIE L JOHNSON
Claimant

APPEAL NO: 14A-UI-12863-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

REMBRANDT ENTERPRISES INC
Employer

**OC: 11/16/14
Claimant: Appellant (2)**

Iowa Code § 96.5(2)a – Discharge

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's December 8, 2014 (reference 01) determination that disqualified him from receiving benefits and held the employer's account exempt from charge because he had been discharged for disqualifying reasons. The claimant participated at the January 12 hearing. Pamela Winkel, the training specialist and human resource representative, appeared on the employer's behalf. 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 March 2014. When the claimant started this job, he received information that the employer could ask him to take random drug tests. According to the employer's policy if an employee fails a drug test, the employer discharges the employee.

On October 24, 2014 the claimant was chosen to submit to a random drug test. The claimant provided a urine sample that needed further testing. On October 24 the employer suspended the claimant because his initial test indicated a positive test for one of drugs the employer tested. As a result, this sample had to undergo further tests.

The laboratory where the confirmatory test occurred had problems talking to the claimant. After a medical review officer learned what medication the claimant took, the employer learned the claimant had a positive drug test. Although the employer relies on the medical review officer to advise employees of their right to have a split sample tested at a laboratory the employee chooses, the claimant does not remember receiving this information. The employer acknowledged the employer did not send the claimant or employees a certified letter advising employees of their right to have a split sample tested at a laboratory the employee chooses and the approximate cost of that test.

Since the claimant had a positive drug test, the employer discharged him on November 19, 2014. The claimant established a claim for benefits during the week of November 16, 2014.

REASONING AND CONCLUSIONS OF LAW:

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.

The evidence establishes the employer violated Iowa Code § 730.5(7)i by failing to notify the claimant in writing by certified mail, return receipt requested, of the results of the test and his right to have the split sample of his collected urine tested at his request along with the actual cost of that test. The requirements of Iowa Code 730 were deemed mandatory in *Harrison v. Employment Appeal Board*. Based on the employer's violation of Iowa's drug testing laws, the employer did not establish the claimant was discharged for work-connected misconduct.

DECISION:

The representative's December 8, 2014 (reference 01) determination is reversed. Since the employer failed to follow the requirements of Iowa's drug testing law, the employer did not establish that the claimant committed work-connected misconduct. As of November 16, 2014 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/can