

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

WENDY M STEARNS

Claimant

APPEAL NO. 14A-UI-12335-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CHILDSERVE COMMUNITY OPTIONS INC

Employer

OC: 11/02/14

Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated November 21, 2014, reference 01, which concluded he was discharged for work-connected misconduct. A telephone hearing was held on December 17, 2014. The parties were properly notified about the hearing. The claimant participated in the hearing with a representative, Jessica Taylor, Attorney at Law. Katelin Larson participated in the hearing on behalf of the employer with witnesses Tonya Bentley and Katie Ceolla. Exhibits One, Two, and Three and A, B, C, E, F, and G were entered into evidence.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked full time for the employer as a respite service assistant from May 29, 2009 to October 28, 2014. She was informed and understood that under the employer's work rules, employees were required to submit to a drug test under certain circumstances; including when an employee is reasonably believed to be using a controlled substance and were subject to termination if they tested positive for drugs. Supervisors with the employer have received training on recognizing the signs of drug or alcohol use.

Pursuant to the policy, the claimant was required to submit to a drug test on October 17, 2014 after an anonymous caller reported on September 28 that the claimant was using drugs. An ex-boyfriend who the claimant had recently broken up with most likely caused this call to be made. The claimant asserted this when questioned about the report, denied ever using illegal drugs, and volunteered to be tested.

A urine sample was taken from the claimant and analyzed using an initial drug screen test and subsequent confirmatory test by a certified laboratory. The analysis disclosed the presence of marijuana in her system. The most likely cause of the positive test result was her unknowingly consuming food prepared by the ex-boyfriend laced with marijuana.

On October 28, 2014 the employer discharged the claimant from violating the drug policy after it received the results of the drug test.

There is no evidence that the original sample collected from the claimant on October 17, 2014 was divided into two components to permit a second, independent confirmatory test. The employer failed to send the claimant a letter by certified mail, return receipt requested, informing her about the result of the test and her right to have a split sample tested.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

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.

In *Harrison v. Employment Appeal Board*, 659 N.W.2d at 588, the Iowa Supreme Court specifically ruled that a claimant cannot be disqualified if the employer fails to send the claimant a certified letter, return receipt requested, about the result of the test and the right to have a split sample tested. In addition, there is no evidence that the sample had been divided into two components "to permit a second, independent confirmatory test...." See Iowa Code § 730.5(7)(b).

The claimant is not disqualified from receiving unemployment benefits because the employer failed to comply with the requirements of Iowa Code § 730.5.

DECISION:

The unemployment insurance decision dated November 21, 2014, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/can