

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**DAVID P STREET**  
Claimant

**HEARTLAND EXPRESS INC OF IOWA**  
Employer

**APPEAL NO. 19A-UI-03667-B2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 04/07/19**  
**Claimant: Appellant (1)**

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Iowa Code § 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Claimant filed an appeal from a decision of a representative dated April 23, 2019, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on May 23, 2019. Claimant participated personally. Employer participated by Lea Peters. Employer's Exhibits 1-6 were admitted into evidence.

**ISSUE:**

The issue in this matter is whether claimant was discharged for misconduct?

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on March 27, 2019. Employer discharged claimant on March 27, 2019 because claimant failed a random drug test in violation of employer's policies for over-the-road truck drivers.

Claimant worked as an over-the-road driver for employer. At the time of his hire, claimant received documents explaining that he would have to conduct random drug tests to maintain his employment. On March 20, 2019 claimant was called in to do a drug test. Claimant completed the test and was given a split sample such that an outside lab should be able to conduct a separate test. Claimant was informed that his test came back positive and was sent this information by certified mail giving him guidance as to his next possible steps. As claimant's urine was tested twice during the initial testing, he chose not to go to an outside lab. Claimant was terminated for the positive drug test.

**REASONING AND CONCLUSIONS OF LAW:**

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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).

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982), Iowa Code § 96.5-2-a.

In order to establish misconduct as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. Rule 871 IAC 24.32(1)a; *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445 (Iowa 1979); *Henry v. Iowa Department of Job Service*, 391 N.W.2d 731, 735 (Iowa Ct. App. 1986). The conduct must show a 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 the employee's duties and obligations to the employer. Rule 871 IAC 24.32(1)a; *Huntoon supra*; *Henry supra*.

Iowa Code section 730.5(8) sets forth the circumstances under which an employer may test employees for the presence of drugs. One of those conditions is a random selection for testing. Claimant was randomly selected for unannounced testing and was not tested as part of drug rehabilitation. See section 730.5(8)a, b. Upon a positive drug screen, Iowa Code § 730.5(3)(f)

requires that an employer offer substance abuse evaluation and treatment to an employee the first time the employee has a positive alcohol test. Iowa Code § 730.5(7)(i)(1) mandates that an employer, upon a confirmed positive drug or alcohol test by a certified laboratory, notify the employee of the test results by certified mail and the right to obtain a confirmatory test before taking disciplinary action against an employee.

Iowa law requires substantial rather than strict compliance with the requirements of Iowa Code §730.5. Those directives which must be complied with include, "mandating written notice by certified mail of (1) any positive drug test, (2) the employee's right to obtain a confirmatory test, and (3) the fee payable by the employee to the employer for reimbursement of the expense of the test. Iowa Code §730.5(7)(i)(1). *Sims v. NCI Holding Corp.*, 759 N.W.2d 333, 338 (Iowa 2009). 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 553, 557, 558 (Iowa 1999).

The last incident, which brought about the discharge constitutes misconduct because employer followed steps required by Iowa law. The administrative law judge holds that claimant was discharged for an act of misconduct and, as such, is disqualified for the receipt of unemployment insurance benefits.

**DECISION:**

The decision of the representative dated April 23, 2019, reference 01, is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

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Blair A. Bennett  
Administrative Law Judge

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Decision Dated and Mailed

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