

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JEANINE L HARDAWAY**  
Claimant

**APPEAL NO. 12A-UI-02515-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**THE UNIVERSITY OF IOWA**  
Employer

**OC: 01/29/12**  
**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

The claimant appealed an unemployment insurance decision dated January 29, 2012, reference 01, that concluded she was discharged for work-connected misconduct. A telephone hearing was held on March 29, 2012. The parties were properly notified about the hearing. The claimant participated in the hearing. Ray Haas participated in the hearing on behalf of the employer with a witness, Mary Eggenburg. Exhibit One and Two were admitted into evidence.

**ISSUE:**

Was the claimant discharged for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant worked as a medical assistant in the employer's ambulatory care services department from May 16, 2005, to December 13, 2011.

The employer has adopted a policy in compliance with the Drug Free Workplace Act of 1988 and the 1990 rules under the Drug Free Schools and Campuses Act prohibiting the unlawful possession, use, distribution, manufacture or dispensing of illicit drugs and alcohol, including controlled substances, "on the University's premises, in its activities, either in the workplace, or in such places and at such times that could have an adverse effect on the employee's work performance or behavior, or interfere with the rights and privileges of co-workers or the public." Violators of the policy are subject to discipline, up to and including, termination. The claimant was informed about the policy.

In early December 2011, law enforcement conducted a search of the claimant's and her husband's home and found a substantial quantity of marijuana and some drug paraphernalia in the kitchen, bedroom, and closets, and other areas of the home. The claimant informed her supervisor about the search of her home and that marijuana was found in the search.

On December 13, 2011, the claimant was placed on paid administrative leave pending an investigation of the drugs found in her home. Her husband was arrested and charged with

possession of marijuana with the intent to distribute. The claimant has not been arrested or charged with any crime.

On January 24, 2011, the claimant was questioned by a manager about her involvement in the drugs found in her home. She denied any knowledge of the drugs found in her home and her husband's possession or sale of marijuana. The employer, however, believed based on the location of the items found during the search that she "possessed a quantity of marijuana and equipment and supplies necessary to distribute marijuana." It is likely the claimant had some knowledge of marijuana being in her residence but the extent of her knowledge has not been established.

On January 25, 2012, the employer discharged the claimant for violating the employer's drug-free workplace policy as set forth above. The employer concluded she possessed marijuana and equipment necessary to distribute marijuana at her residence and that this would have an adverse effect on the rights of coworkers to provide services and the public to receive health services.

There is no evidence that claimant's residence is on University premises or that the claimant performed any health services or activities related to her job for which the University receives federal funds at her residence. There is no evidence that the claimant possessed, used, distributed, manufactured or dispensed illegal drugs and alcohol on University premises or while she was involved in any employer-related activity.

#### **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 findings of fact show how I resolved the disputed factual issues in this case by carefully assessing the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. The preponderance of the evidence standard applies in this case. The claimant did not dispute the evidence about what was found in her home or where it was found in the search of her home. It is probable that the claimant had some knowledge of marijuana being in her residence but the extent her knowledge has not been established.

The law requires that misconduct be "work-connected" before a claimant can be disqualified from receiving benefits. As the facts show, her conduct in knowing there was marijuana in her house did not take place in the workplace, while she was on-duty, or while performing any work for the employer. The Iowa Supreme Court has ruled that off-duty misconduct can constitute work-connected misconduct under the unemployment insurance law if the conduct violates a known rule of the employer. *Kleidosty v. Employment Appeal Board*, 482 N.W.2d 416 418

(Iowa 1992). In *Kleidosty*, the Iowa Supreme Court ruled that a claimant convicted of selling cocaine deliberately violated a known work rule prohibiting illegal conduct, which made the conduct disqualifying work-connected misconduct.

In this case, the claimant has not even been charged with any crime. For a criminal prosecution for possession of drugs, the requirements for constructive possession are rigorous and mere knowledge and proximity are not enough. See *State v. Atkinson*, 620 NW 2d 1, 4-6 (Iowa 2000). The evidence does not warrant a legal conclusion that the claimant possessed marijuana.

But even more importantly, the claimant's conduct of knowing there was marijuana in her house would not violate the Drug Free Workplace Act of 1988, the rules under the Drug Free Schools and Campuses Act, or a reasonable interpretation of the employer's policy, which the employer asserts is in compliance with the law and rules.

The Drug-Free Workplace Act of 1988 requires federal contractors and federal grantees to provide drug-free workplaces as a condition of receiving a contract or grant from a federal agency. 41 U.S.C §§ 8102 & 8103 (2010). Contractors or grantees must publish and enforce a policy that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance by an employee is prohibited in the workplace and must specify the actions that will be taken against employees for violations. 41 U.S.C §§ 8102 (a)(1)(A) & 8103(a)(1)(A). The term "drug-free workplace" means a site for the performance of work done in connection with a specific contract or grant at which employees of the entity are prohibited from engaging in the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance. 41 U.S.C §§ 8101(a)(5).

Similarly, the Drug Free Schools and Campuses Act provides that to receive federal funds or any other form of financial assistance, an institution of higher education must certify to the Secretary that the institution has adopted a program that includes standards of conduct that prohibit the unlawful possession, use, or distribution of illicit drugs and alcohol by students and employees on the institution's property or as part of any of the institution's activities and sanctions for violating those standards. 20 U.S.C § 1011i(a)(1) (emphasis added). The regulations implementing the statute require institutions to publish and enforce a policy prohibiting the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in the workplace and requiring employees to notify the institution if they are convicted for a violation of a criminal drug statute occurring in the workplace. 34 CFR § 84.205. Drug-free workplace means a site for the performance of work done in connection with a specific award at which employees of the recipient are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance. 34 CFR § 84.635. The regulations require the institution to identify all of workplaces where work under the federal award is performed.

Interpreted in light of the federal laws and regulations the policy was adopted to comply with, it is clear that the employer's policy prohibits unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance on University property or when an employees is engaged in some University activity outside the workplace where the drug involvement could adversely affect the employer.

Although the policy's sentence is awkwardly drafted, the phrase "either in the workplace, or in such places and at such times that could have an adverse effect on the employee's work performance or behavior, or interfere with the rights and privileges of co-workers or the public," must modify "in its activities." This would cover a common situation where an employee is

working on a University-related activity away from University property. Clearly, the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance while an employee is working off University property for the employer would also fall under the drug-free workplace policy.

The employer relied on its Drug Free Workplace policy as the justification for the claimant's discharge in her termination letter. As a result, even if the claimant had some knowledge that there was marijuana or drug paraphernalia in the home, she did not deliberately violate any known work rule as required for disqualification under the *Kleidosty* because this conduct did not occur in the workplace or while she was working for the employer away from the workplace. She is qualified for unemployment insurance benefits, provides she is otherwise eligible.

**DECISION:**

The unemployment insurance decision dated January 29, 2012, reference 01, is reversed. 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/css