

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

**LISA WATKINS**  
Claimant

**APPEAL NO: 18A-UI-01277-JE-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MOSAIC**  
Employer

**OC: 12/24/17**  
**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the January 18, 2018, reference 02, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on February 21, 2018. The claimant participated in the hearing. Debra Grant, Human Resources Business Partner; Rita Gochanour, Direct Support Supervisor; Karen Hadley, Program Manager; and Tom Kuiper, Employer Representative; participated in the hearing on behalf of the employer. Employer's Exhibits One through Six were admitted into evidence.

**ISSUE:**

The issue is whether the employer discharged the claimant for work connected misconduct.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time direct support associate for Mosaic from February 10, 2015 to October 17, 2017. She was discharged for failing a drug test following a workplace injury.

On October 15, 2017, the claimant fell while at work. She asked to go to the emergency room because she recently had hip replacement surgery and she was concerned that the fall had possibly injured her hip. The employer gave the claimant permission to go to the emergency room. On October 16, 2017, the employer called the claimant and asked her to come in and fill out an incident report and provide a urine sample for drug testing due to the workplace accident, in accordance with Iowa Code section 730.5. The claimant did not go in October 16, 2017, but did go to the employer's location October 17, 2017, and submitted to a urine test in private and sanitary conditions. The employer takes the sample onsite in an "I Cup" which states whether the sample is negative or non-negative and checks the temperature of the urine. If the sample tests as non-negative the employer forwards the sample overnight via Fed Ex to Fort Worth, Texas, where its medical review officer is located. The claimant's drug screen came back as non-negative for cocaine and the employer sent it to the medical review officer. It did not split the test sample at the time of collection, did not tell the claimant what drugs it was testing for,

and did not give the claimant an opportunity to provide information about medication or anything else that might affect the outcome of the test. A man who identified himself as the medical review officer called the claimant a few days later and said she tested positive for cocaine (Employer's Exhibit Four). The claimant asked him if he needed to know what types of medications she was on and he said no. The medical review officer did not ask the claimant any questions. The claimant notified her supervisor of the positive test and on October 26, 2017, the employer sent the claimant a certified letter, return receipt requested, with a copy of the confirmed positive test results (Employer's Exhibit Five). The letter notified the claimant she had a right to choose a second confirmatory test within seven days (Employer's Exhibit Five). The claimant did not receive the letter despite the fact the employer sent it to her twice. On November 7, 2017, the employer sent the claimant another letter informing her that her employment was terminated (Employer's Exhibit Six). The employer's drug and alcohol free workplace policies were provided to the claimant in writing.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for disqualifying job misconduct.

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).

The employer has the burden of proving disqualifying misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). Iowa Code section 730.5 provides the authority under which a private sector employer doing business in Iowa may conduct drug or alcohol testing of employees. Testing following a workplace accident is allowed. The evidence in the record clearly establishes that the employer did not meet all requirements of Iowa Code section 730.5. The employer did not perform the test immediately before or after the claimant's shift (Iowa Code section 730.5(6)(a), split the sample at the time of the collection on front of the claimant (Iowa Code section 730.5.7(b), give the claimant an opportunity to provide any information that might affect the outcome of her test 730.5(7)(c)(2), or inform the claimant of which drugs she would be tested 730.5(7)(c)(2).

Because the employer failed to strictly follow the provisions of Iowa Code section 730.5 the test was not authorized by law and cannot serve as the basis for disqualifying the claimant from unemployment insurance benefits. Based upon the evidence in the record and the application of the appropriate law, the administrative law judge concludes that the claimant was discharged from employment for no disqualifying reason. Therefore, benefits must be allowed.

**DECISION:**

The January 18, 2018, reference 02, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/scn