

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**BREANNE S SMITH**

Claimant

**APPEAL NO. 07A-UI-01494-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HOME DEPOT USA INC**

Employer

**OC: 01/07/07 R: 01  
Claimant: Respondent (1)**

Section 96.5(2)a – Discharge

**STATEMENT OF THE CASE:**

The employer, Home Depot, filed an appeal from a decision dated February 1, 2007, reference 01. The decision allowed benefits to the claimant, Breanne Smith. After due notice was issued, a hearing was held by telephone conference call on February 26, 2007. The claimant participated on her own behalf. The employer participated by Human Resources Manager Angie Rodenburg. Exhibit One was admitted into the record.

**ISSUE:**

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

**FINDINGS OF FACT:**

Breanne Smith was employed by Home Depot from February 1, 2005 until January 12, 2007, as a full-time sales associate. During the course of her employment she received a copy of the employee drug testing policy. Employees who are injured on the job must fill out an incident report but no drug testing is done unless they seek medical attention.

On January 1, 2007, the claimant sustained a work-related injury. She did not seek medical attention until January 2, 2007, at which time she gave a urine sample for drug analysis. The medical review officer contacted her on January 9, 2007, and advised her she had tested positive for codeine and had 24 hours to provide a copy of a prescription that was less than a year old. She was unable to do so because the medication had been prescribed in 2003 when she was living in another state. Ms. Smith had a few of the tablets remaining and had taken one the evening of January 1, 2007, after she had left work due to the injury but before seeking medical attention and giving the urine sample the next day.

When she was unable to provide a current prescription to the MRO, the employer was notified on January 11, 2007, and the claimant was discharged the next day pursuant to company policy.

## REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5-2-a provides:

An individual shall be disqualified for benefits:

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 individual shall be disqualified for benefits 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.

871 IAC 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 Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The claimant did not test positive for illegal substances, but for a controlled substance which required a prescription. Although she had a prescription, it was not current because it had not been refilled since being issued in 2003. Ms. Smith was not prudent in taking a controlled substance which was over two years old, and for which she had no current prescription, but imprudence does not equate to misconduct. She acknowledged taking the medication only after the accident caused her pain, but still tested positive because of the delay in seeking medical attention. This is a violation of the company policy. However, misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Newman v. IDJS, 351 N.W.2d 806 (Iowa App. 1984).

**DECISION:**

The representative's decision of February 1, 2007, reference 01, is affirmed. Breanne Smith is qualified for benefits, provided she is otherwise eligible.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

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