

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

ARDELLA L ANDERSON
Claimant

APPEAL NO: 18A-UI-06409-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

WESTROCK SERVICES INC
Employer

**OC: 05/13/18
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the June 5, 2018, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on June 27, 2018. The claimant participated in the hearing with her former fiancé's mother Carol West. Jamie Naughton, Human Resources Coordinator and Deb Hinerichsen, Human Resources Administrator, participated in the hearing on behalf of the employer.

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 inspector/packer/feeder for Westrock Services, Inc. from October 30, 2000 to November 16, 2017. She was discharged for failing a drug test following a random drug test.

The employer requires random drug-tests of manufacturing employees, in safety sensitive positions, up to three times per year. The employees to be tested are selected by a third party, independent provider, which uses a computer generated numbering system when choosing who will be tested in accordance with Iowa Code section 730.5. On November 7, 2017, the claimant's number was picked for a random drug test and the test was done at the beginning of her shift at the occupation health office. The testing conditions are sanitary and private and the claimant's urine sample was split at the time of collection. The claimant was given the opportunity to provide any information to the medical review officer that might affect the test results and was informed of all of the drugs for which she would be tested. The medical review officer notified the claimant she tested positive for benzodiazepine November 9, 2017, before providing the employer with the same information. After receiving the positive test results, the employer sent the claimant a certified letter, return receipt requested, notifying her of her right to a confirmatory test at her expense. The employer terminated the claimant's employment November 16, 2017.

The claimant testified she accidentally took one of her former fiancé's medications that were located in the same drawer where the claimant kept her medications. She agrees the positive test result was correct but stated the prescription drug was taken by mistake.

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. Random drug testing is allowed, provided the employees are selected by a third party company using a computer based system. The evidence in the record clearly establishes that the employer met all requirements of Iowa Code section 730.5 even though the claimant mistakenly took the incorrect medication. The employer followed the process provided for random testing, performed the test immediately after the start of the claimant's shift, paid the

costs of the initial test, provided private and sanitary conditions for the test, split the samples at the time of the collection, gave the claimant an opportunity to provide any information that might affect the outcome of her test, and informed the claimant of which drugs would be tested. Additionally, it had the confirmed positive testing done by a certified laboratory before taking disciplinary action, notified the claimant of the test results by certified mail, return receipt requested, and stated her right to a confirmatory test at her own expense. The employer's drug and alcohol free workplace policies were provided to the claimant in writing.

Because the employer correctly followed the provisions of Iowa Code section 730.5, the test was authorized by law and can serve as the basis for disqualifying the claimant from unemployment insurance benefits. While it is unfortunate that the claimant mistakenly took her former fiancé's medication, by doing so she violated the employer's drug policy. 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 disqualifying job misconduct upon testing positive for a prescription medication that was not prescribed to her. Therefore, benefits are denied.

DECISION:

The June 5, 2018, reference 01, decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/scn