

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GUY S SPORES

Claimant

APPEAL NO. 11A-UI-12137-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

AGRI STAR MEAT & POULTRY LLC

Employer

**OC: 12-0510-
Claimant: Appellant (1)**

Iowa Code § 96.5(2)a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the September 6, 2011, reference 02, decision that denied benefits. After due notice was issued, a hearing was held on October 10, 2011. The claimant did participate. The employer did participate through Laura Rooney, payroll assistant, and Karina Hillman, safety and workers' compensation supervisor.

ISSUE:

Was the claimant discharged due to job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a laborer, full-time, beginning February 17, 2010, through May 25, 2011, when he was discharged. The claimant injured his left hand and index finger on May 1 and sought medical treatment from the company nurse, Kathy. He was bandaged and sent back to work. Later that day, the claimant sought medical treatment from his own family doctor. When he returned to work on May 2 with restrictions from his family physician, he was sent to the company workers' compensation physician for treatment. Because he was seeking treatment as a result of a work-related injury, he was given a mandatory drug test pursuant to the employer's written policy, a copy of which had been given to him. When he returned to the plant on May 2 he was notified that he was on unpaid suspension pending the results of his drug test. The claimant was notified by the medical review officer (MRO) by telephone that he had tested positive for marijuana (TCH). The company was notified by the MRO of the positive test result on May 6, 2011. The claimant was notified by the company on May 9 by certified mail of his test positive test results and his right to have the split sample retested at his own expense. The claimant chose not to have the split sample tested. Since he did not seek to have the split sample tested and did not provide any valid reason to the MRO about why his sample was positive for TCH, he was discharged effective May 25, 2011.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

Iowa Code § 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.

The employer has met the requirements of Iowa Code § 730.5. The claimant's drug screen was positive and he was notified of his results by both the MRO and the company by certified mail. He was given the option to have the split sample tested but chose not to take it. The sample was tested by a certified laboratory. The claimant is required to be drug free in his job. His violation of the known work rule constitutes misconduct. Benefits are denied.

DECISION:

The September 6, 2011, reference 02, decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/kjw