

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

LEVELLE M HORNE
Claimant

A-LERT
Employer

APPEAL NO. 19A-UI-02783-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 06/17/18
Claimant: Appellant (1)

Iowa Code § 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated March 26, 2019, reference 03, which held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on April 19, 2019. Claimant participated personally and with witness Josiah Kline. Employer participated by Dawn Severs. Employer's Exhibits 1-6 were admitted into evidence.

ISSUE:

The issue in this matter is whether claimant was discharged for misconduct?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on February 26, 2019. Employer discharged claimant on February 26, 2019 because claimant, when asked to submit a reasonable suspicion UA for testing, submitted a UA outside of the acceptable temperature testing range thereby constituting a positive drug test result. Claimant was then terminated.

Claimant worked as a millwright for employer. As a part of claimant's hire, he agreed to random and reasonable suspicion UA's. Claimant had submitted a number of UA's over the months he'd worked for employer and all had come up negative.

On February 26, 2019, shortly after claimant started work, a manager came by and told claimant that he smelled marijuana on him. Claimant was then taken from by a manager to the nurse's office where claimant was asked to submit a reasonable suspicion UA. Claimant went into the restroom, prepared a sample, and returned it to the nurse. The sample was found to not be within the testable range between 90-100 degrees.

As claimant did not submit a testable UA when requested, he was terminated by employer for his violation of employer's drug and alcohol policy which claimant received at the time of his hire.

Claimant stated that he does not smoke marijuana, and stated that the reason his sample was outside of range was because claimant placed the sample on top of the toilet that was sweating and very cold. Claimant also stated that under employer's rules he was to be allowed to submit another UA. Employer disputed this statement as she had employer's drug policy in front of her.

Employer sent claimant a copy of the results by certified mail to claimant. The results indicated claimant's sample was not tested as the temperature was outside of the testable range.

REASONING AND CONCLUSIONS OF LAW:

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).

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982), Iowa Code § 96.5-2-a.

In order to establish misconduct as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. Rule 871 IAC 24.32(1)a; *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445 (Iowa 1979); *Henry v. Iowa Department of Job Service*, 391 N.W.2d 731, 735 (Iowa Ct. App. 1986). The conduct must show a 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 the employee's duties and obligations to the employer. Rule 871 IAC 24.32(1)a; *Huntoon supra*; *Henry supra*.

Iowa Code § 730.5 allows drug testing of an employee if, among other conditions, the employer has "probable cause to believe that an employee's faculties are impaired on the job." The basis under which the employer in this matter legitimately tested claimant was reasonable suspicion. See 730.5(8)c. The definition of "reasonable suspicion" is found at section 730.5(1)h. The employer stated that there had been observations of claimant's smell of marijuana at work that would lead to the conclusion that claimant was using drugs. As a result of this reasonable suspicion, testing was conducted and claimant's sample was unable to be tested with a temperature outside the testable range.

In this matter, the evidence established that claimant was discharged for an act of misconduct when claimant violated employer's policy concerning drug usage. The last incident, which brought about the discharge, constitutes misconduct because claimant could not submit a testable sample after being requested to do so under reasonable suspicion. The administrative law judge holds that claimant was discharged for an act of misconduct and, as such, is disqualified for the receipt of unemployment insurance benefits.

DECISION:

The decision of the representative dated March 26, 2019, reference 03, is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

Blair A. Bennett
Administrative Law Judge

Decision Dated and Mailed

bab/scn