

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROBERT H ALLEN
Claimant

APPEAL NO: 14A-UI-10761-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WINDSOR WINDOW COMPANY
Employer

**OC: 02/23/14
Claimant: Appellant (2)**

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's October 15, 2014 determination (reference 01) that disqualified him from receiving benefits and held the employer's account exempt from charge because he had been discharged for disqualifying reasons. The claimant participated at the November 5 hearing. Liz Mallaney, the human resource manager, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is qualified to receive benefits.

ISSUE:

Did the employer discharge the claimant for reasons constituting work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in March 2012. He worked as a full-time fabricator on the patio door line. The employer has a written drug policy that informs employees the employer can request they take a drug test if the employer has reasonable suspicion the employee is under the influence of drugs at work. The employer's drug policy also informs employees that the employer has zero tolerance for drugs and if an employee has a positive drug test, he will be discharged.

Prior to September 16, 2014, the claimant lost a great deal of weight, he missed work, looked like he was not sleeping, his eyes were drooping and he appeared anxious. On September 16, the claimant slurred his words and looked like he had not slept for a while. Based on his slurred speech and appearance on September 16, the employer asked the claimant to take a drug test.

The claimant agreed to take the drug test. He went to a certified lab. The claimant provided the lab with a list of prescribed medication he takes and has taken since he started working for the employer. One of the prescribed drugs is Adarol, an amphetamine. On September 23, 2014, the employer received information that the claimant had a positive drug test for amphetamine and methamphetamine. The employer discharged the claimant on September 23 for failing a drug test. The employer sent the claimant a certified letter informing him he had the right to

have the split sample tested at a laboratory he chose. The letter gave the claimant information about the cost of the second test. Also, the letter stated that if the second test was negative, the claimant would get his job back.

The claimant talked to the employer's human resource employees and explained that the medication he took, Adarol, would show up as positive for amphetamines. The claimant recently became depressed because of the death of his grandmother and uncle. The claimant did not ask that the split sample be tested at another lab.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code § 96.5(2)a. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 665 (Iowa 2000).

The law defines misconduct as:

1. A deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment.
2. A deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees. Or
3. An intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer.

Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion do not amount to work-connected misconduct. 871 IAC 24.32(1)(a).

The Iowa Supreme Court has ruled that an employer cannot establish disqualifying misconduct based on a drug test performed in violation of Iowa's drug testing laws. *Harrison v. Employment Appeal Board*, 659 N.W.2d 581 (Iowa 2003); *Eaton v. Employment Appeal Board*, 602 N.W.2d 553, 558 (Iowa 1999). Based on testimony presented, the evidence does not establish that the employer did not or did not perform the drug test in accordance with Iowa's drug testing laws in chapter 730.

It is difficult to understand why a medical review officer would confirm the drug test as positive if the claimant had a prescription for Adarol, which is an amphetamine that is typically used for the claimant's health situation. The parties could have made this decision easier, by providing documents to support their respective testimony, but did not. The employer has the burden to establish the claimant committed work-connected misconduct. Since the employer failed to provide a copy of the drug test results completed by a medical review officer, the evidence does not establish that the claimant violated the employer's drug policy. The claimant's testimony provided a reasonable explanation to explain why his drug test results were positive. The evidence does not establish that the claimant committed work-connected misconduct. As of September 28, 2014, the claimant is qualified to receive benefits.

DECISION:

The representative's October 15, 2014 determination (reference 01) is reversed. The employer discharged the claimant for business reasons, but did not establish that the claimant committed work-connected misconduct. As of September 28, 2014, the claimant is qualified to receive benefits. The employer's account is subject to charge.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs