

**IOWA WORKFORCE DEVELOPMENT DEPARTMENT
UNEMPLOYMENT INSURANCE APPEALS SECTION
1000 EAST GRAND AVENUE
DES MOINES IA 50319**

**Appeal Number: 05A-UI-02463-RT
OC: 02-06-05 R: 01
Claimant: Respondent**

**JAMES T COOLEY
20581 – 20TH ST
LAWTON IA 51030**

**AGAN TRI-STATE DRYWALL SUPPLY INC
2609 CAROLYN AVE
SIOUX FALLS SD 57106**

**RICHARD STURGEON
PO BOX 3372
SIOUX CITY IA 51102-3372**

ORDER ON PREHEARING CONFERENCE

This matter came before the undersigned pursuant to objections dated May 2, 2005 to the employer's answers to the claimant's interrogatories and the claimant's request for discovery and set for a prehearing conference on May 19, 2005 at 11:00 a.m. The prehearing conference was held on May 19, 2005. It started when the record was opened at 11:13 a.m. and ended when the record was closed at 11:43 a.m. Although the prehearing conference had been scheduled for 11:00 a.m. because of a conflict with another unemployment insurance appeal hearing with Mr. Sturgeon, the administrative law judge determined to start the prehearing conference when the prior appeal hearing was completed. The administrative law judge so informed the employer and the employer agreed. The claimant, by his representative, Richard Sturgeon, made three objections to the employer's answers to interrogatories and discovery in his objections by way of letter dated May 2, 2005, as follows: The employer did not provide an entire copy of the employee's handbook at interrogatory 2; the employer did not provide the entire personnel file to the claimant as requested in the interrogatory 6; and the employer provided the names of no witnesses at interrogatory 15. At the hearing, the claimant, by his representative, Richard Sturgeon, raised a fourth objection that the answer to the interrogatories were not notarized and sworn. The employer was represented at the prehearing conference by Dan Konz. Randy Hongslo sat in on the hearing for the employer. Richard Sturgeon represented the claimant.

Mr. Konz informed the administrative law judge that the only reason that will be offered at the hearing for the claimant's discharge and the only reason to be considered in determining unemployment insurance benefits is a failed random drug test. Accordingly, the employer will not be permitted to raise any other reason for the claimant's discharge at the hearing unless the employer can provide good cause at the hearing why those reasons were not previously provided.

Concerning the first objection to the interrogatories and discovery concerning portions of the employee handbook, Mr. Sturgeon agreed to accept the previously submitted copies of a portion of the handbook concerning the employer's drug testing policy and the fleet safety compliance manual from the Department of Transportation so long as no other documents from the employee's handbook are offered at the hearing. Accordingly, the administrative law judge concludes that the employer shall not be required to provide any other copies of portions of its handbook or of the fleet safety compliance manual unless the employer can demonstrate good cause at the hearing why any copies of the handbook and/or the fleet safety compliance manual were not previously provided to the claimant and the Appeals Section.

Concerning the objections to the personnel file, Mr. Sturgeon stated that he was aware of the potential existence of other documents related to the claimant's drug test. Mr. Konz did not have the personnel file with him at the time of the prehearing conference. Mr. Konz stated that the claimant's personnel file was relatively small and would not be an undue hardship to copy and provide copies to Mr. Sturgeon on behalf of the claimant and the Appeals Section. Because of the potential additional documents that might be in the personnel file related to the claimant's drug test, the administrative law judge concludes that the claimant's personnel file shall be copied and copies provided both to Mr. Sturgeon on behalf of the claimant and the Appeals Section.

Concerning witnesses, Mr. Konz credibly stated that he intends to call two witnesses, himself and Randy Hongslo. Mr. Sturgeon was satisfied with the employer's statement. Accordingly, the administrative law judge concludes that Mr. Konz and Mr. Hongslo will be the only witnesses permitted to testify at the hearing unless the employer can demonstrate good cause why the names of other witnesses were not previously provided to Mr. Sturgeon on behalf of the claimant.

Concerning the notarization and sworn statement to the answer of the interrogatories, the administrative law judge administered an oath to Mr. Konz that his answers to the interrogatories were true and correct as he would reasonably believe. The administrative law judge is authorized to take such an oath and Mr. Sturgeon accepted the oath made by Mr. Konz at the prehearing conference.

There being no other matters presented to the administrative law judge at the prehearing conference, the administrative law judge enters the following order. The employer shall not be required to provide any additional copies of the employee handbook or the fleet compliance manual but the employer will not be permitted to offer any other copies of either document at the hearing unless the employer can demonstrate good cause why those copies were not previously provided to Mr. Sturgeon on behalf of the claimant and the Appeals Section. The employer shall be required to provide a copy of the claimant's personnel file to Mr. Sturgeon on behalf of the claimant and the Appeals Section by May 27, 2005. The employer will be permitted to present two witnesses at the hearing, Dan Konz and Randy Hongslo, and will be prohibited from presenting any other witnesses at the hearing unless the employer can demonstrate good cause why the names of such additional witnesses were not provided to

Mr. Sturgeon on behalf of the claimant and to the Appeals Section previously. The oath provided by Mr. Konz at the prehearing conference is acceptable. It is so ordered.

G. Kent Renegar
Administrative Law Judge

Dated and mailed:

KR:sc/pjs

Copies to all parties of record.