

Employee's Admission of Off-Duty Marijuana Use Insufficient to Deny Unemployment Benefits

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An employee's admission of off-duty marijuana use was not "misconduct" sufficient to deny unemployment benefits, even if it may have been a sufficient reason for his discharge, according to an Illinois appellate court. *Eastham v. The Housing Authority of Jefferson County*, No. 09-MR-57 (Ill. App. Ct. 5th Dist. Dec. 2, 2014).

Eastham worked for the Housing Authority of Jefferson County in its maintenance facility, but his job was not safety-sensitive. He was required to submit to a random drug test pursuant to the Housing Authority's drug-and-alcohol-free workplace policy. The policy provided that the "possession, use, consumption or being under the influence of a controlled substance...while on Housing Authority premises and/or while in the course of employment of the Housing Authority" would be a violation of the terms of employment. After taking the test, Eastham informed his supervisor that he had smoked marijuana on two occasions while on a vacation a few weeks earlier. Eastham believed he would not pass the drug test. As a result, Eastham was terminated for violating the Housing Authority's policy. Following his discharge, the result of the drug test came back negative.

Eastham subsequently filed a claim for unemployment benefits under the state's Unemployment Insurance Act. The application for benefits included a question which asked whether the claimant's employer had a rule or policy that related to the last act that led to the claimant's discharge, and, if so, what the rule or policy was. Eastham indicated a policy existed, specifically noting, "not using drugs while employed" by the Housing Authority. The Department of Employment Security claims adjudicator found Eastham to be ineligible for benefits. This decision was affirmed by a Department of Employment Security referee, as well as by the Board of Review of the Department of Employment Security. The Board concluded that "while in the course of employment" referred to Eastham's entire "tenure while working for the employer, not just while performing services."

Eastham appealed the Board's decision to the Circuit Court of Jefferson County which reversed the Board's decision, finding the Board had "misapplied the definition of 'in the course of employment.'" In addition, the Circuit Court found that the Housing Authority's policy was unreasonable. The Appellate Court affirmed, after reviewing whether the Board properly concluded that Eastham's conduct consisted of "misconduct within the Unemployment Insurance Act" (under the Act, employees discharged for misconduct are ineligible to receive unemployment benefits). The Court of Appeals analyzed the three elements necessary to establish misconduct, focusing on whether Eastham had actually violated the Housing Authority's policy, due to the meaning of the

phrase, “while in the course of” employment. The Appellate Court rejected the Board’s interpretation, stating instead that Illinois courts define the phrase in the context of workers’ compensation claims to mean “at a place where the employee is reasonably expected to fulfill her duties” and “while she is performing those duties.” In addition, because Eastham’s drug test was negative, he did not violate the policy by being “under the influence” of drugs at work.

Although the Appellate Court found the Housing Authority’s drug policy generally to be reasonable, it rejected the employer’s argument that the policy should be interpreted to prohibit any use of illicit substances at any time during an employee’s tenure and also to allow the discharge of an employee who admits to using marijuana off-duty even where the employee does not fail a drug test. The Court emphasized that Eastham’s job was not safety-sensitive, and further noted that the federal Drug-Free Workplace Act “does not require grant recipients to discharge an employee for off-duty marijuana use.”

While Eastham’s actions did not constitute misconduct that would disqualify him from receiving unemployment insurance benefits, the Court stated that it was not deciding whether his admission was sufficient to justify his discharge. “An employee’s conduct may be sufficient to justify his discharge without constituting misconduct sufficient to disqualify him from benefits under the Unemployment Insurance Act.”