

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JAMES STEUK
Claimant

APPEAL NO: 13A-UI-06001-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

KRAJICEK INC
Employer

OC: 04/14/13
Claimant: Respondent (2/R)

Iowa Code § 96.5(2)(a) - Discharge for Misconduct
Iowa Code § 96.3-7 - Overpayment

STATEMENT OF THE CASE:

Krajicek, Inc. (employer) appealed an unemployment insurance decision dated May 10, 2013, reference 01, which held that James Steuk (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 27, 2013. The claimant participated in the hearing. The employer participated through Vicky Frederickson.

ISSUE:

The issue is whether the claimant's voluntary separation from employment qualifies him to receive unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a full-time over-the-road truck driver from April 26, 1995 through April 18, 2013 when he was discharged for refusing to drive a load to Milwaukee, Wisconsin. The employer used to have 50 drivers but now has 36. Drivers typically like one area of the country over another area and if the employer can accommodate those requests, it does so. The claimant does not like to drive east of the Mississippi River but he has driven to Wisconsin, Illinois and Minnesota on occasion. He was never guaranteed, in writing or otherwise, that he would not have to take a load east of the Mississippi River.

On April 18, 2013, the employer dispatched the claimant to drive a load of product to Milwaukee, Wisconsin. There were no other drivers in the area and it was important that this load get delivered but the claimant refused. The assistant manager said that she explained to the claimant that it was a time sensitive issue and that it would cost \$75,000.00 if he refused the trip but he denies she told him that information. When he refused the load, the assistant manager told him he might as well clean out his truck and he had already started to do so.

The claimant filed a claim for unemployment insurance benefits effective April 14, 2013 and has received benefits after the separation from employment.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. 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.

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 the burden to prove the discharged employee is disqualified for benefits due to work-related misconduct. *Sallis v. Employment Appeal Bd.*, 437 N.W.2d 895, 896 (Iowa 1989). The claimant was discharged on April 18, 2013 for refusing to take a load to Milwaukee, Wisconsin. He did not like to drive east of the Mississippi River and the employer tried to accommodate his preferences but needed him to take this load and he refused. The question of whether the refusal to perform a specific task constitutes misconduct must be determined by evaluating the reasonableness of the employer's request in light of all circumstances and the employee's reason for noncompliance. *Endicott v. Iowa Department of Job Service*, 367 N.W.2d 300 (Iowa App. 1985). The claimant was not going to have to take that route every day but was needed to take the load on this particular day. The request was reasonable but the claimant's actions were not. The claimant's refusal to follow directives shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the

employee's duties and obligations to the employer. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

Iowa Code § 96.3(7) provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. The overpayment recovery law was updated in 2008. See Iowa Code § 96.3(7)(b). Under the revised law, a claimant will not be required to repay an overpayment of benefits if all of the following factors are met. First, the prior award of benefits must have been made in connection with a decision regarding the claimant's separation from a particular employment. Second, the claimant must not have engaged in fraud or willful misrepresentation to obtain the benefits or in connection with the Agency's initial decision to award benefits. Third, the employer must not have participated at the initial fact-finding proceeding that resulted in the initial decision to award benefits. If Workforce Development determines there has been an overpayment of benefits, the employer will not be charged for the benefits, regardless of whether the claimant is required to repay the benefits.

Because the claimant has been deemed ineligible for benefits, any benefits the claimant has received could constitute an overpayment. Accordingly, the administrative law judge will remand the matter to the Claims Division for determination of whether there has been an overpayment, the amount of the overpayment, and whether the claimant will have to repay the benefits.

DECISION:

The unemployment insurance decision dated May 10, 2013, reference 01, is reversed. The claimant is not eligible to receive unemployment insurance benefits because he was discharged from work for misconduct. Benefits are withheld until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The matter is remanded to the Claims Section for investigation and determination of the overpayment issue.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/css