

FINDINGS OF FACT:

Having heard the testimony of the witness and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Provencher was employed by Genuine Parts Company from April 25 until September 1, 2005 as a relief driver and loader. The employer has a written policy, of which Mr. Provencher was aware, that prohibits drivers from carrying passengers without the express permission of the general or district manager. The policy is designed to limit the employer's liability in the event of an accident with the vehicle.

The employer received reports from several individuals that Mr. Provencher was allowing people not associated with the company ride in the company vehicle with him. The passengers included his wife and his minor son. He was suspended on August 29 pending a full investigation of his activities. Before the investigation was completed, Mr. Provencher notified the employer that he was quitting effective September 1, 2005. It is doubtful as to whether continued work would have been available for him if he had not quit.

Mr. Provencher has received a total of \$896.00 in job insurance benefits since filing his claim effective September 4, 2005.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Provencher was separated from employment for any disqualifying reason. He submitted a resignation on September 1, 2005. It appears that he submitted the resignation in anticipation of being discharged. An individual who voluntarily quits employment is disqualified from receiving job insurance benefits unless the quit was for good cause attributable to the employer. Iowa Code section 96.5(1). The evidence of record does not establish any good cause attributable to the employer for the quit.

It is unlikely that the employer would have retained Mr. Provencher if he had not quit, given his violations of policy. Even if the administrative law judge were to conclude that he was discharged, he still would not be entitled to job insurance benefits. An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Mr. Provencher violated the employer's policy regarding passengers in his vehicle on more than one occasion. His conduct could have resulted in unnecessary financial liability for the employer if his unauthorized passengers had sustained injuries while in the employer's vehicle. His violations of the policy constituted a substantial disregard of the employer's interests and standards. As such, it constituted disqualifying misconduct.

For the reasons stated herein, the administrative law judge concludes that Mr. Provencher is not entitled to job insurance benefits on his claim filed effective September 4, 2005. He has received benefits since filing the claim. Based on the decision herein, the benefits received now constitute an overpayment and must be repaid. Iowa Code section 96.3(7).

DECISION:

The representatives' decision dated September 27, 2005, reference 01, is hereby reversed. Mr. Provencher was separated from employment for disqualifying reasons. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he satisfies all other conditions of eligibility. Mr. Provencher has been overpaid \$896.00 in job insurance benefits.

cfc/s