

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: The claimant was employed by the employer, most recently for approximately two years as a full-time director of operations, from July 20, 1998 until he was discharged on August 25, 2005. The claimant had also been previously employed by the employer. The claimant was discharged for a conflict of interest when he opened up or established a new business recruiting truck drivers and placing the truck drivers with competing carriers. The employer has a policy, a copy of which the claimant received and for which he signed an acknowledgement, providing guidelines for appropriate conduct including refraining from behavior that is harmful to the business of the employer and further including a conflict of interest policy providing that business dealings that represent or appear to represent a conflict of interest between the employer and the employee are prohibited. The conflict of interest policy requires full disclosure. The claimant did open up a new business recruiting truck drivers and placing them with competing carriers as well as the employer. The claimant placed an ad for this business on August 15, 2005 and the ad implied that the business is ongoing. The claimant never informed the employer about his business. Rather, a co-worker learned of the business and told the employer's witness, Laura Watson, Director of Claims, who informed the President, David McIrvine, one of the employer's witnesses. Ms. Watson learned of this business on August 24, 2005. Mr. McIrvine and others met with the claimant on August 25, 2005, when the claimant acknowledged that he had established the business. The claimant was not recruiting drivers from the employer. However, he was looking for drivers to place with other carriers. The employer herein, West Side Transport, Inc., has an extensive effort to recruit its own drivers. It is very difficult to find qualified drivers. The employer employs three full-time recruiters to find qualified drivers and the employer does not use an external recruiter.

REASONING AND CONCLUSIONS OF LAW:

The question presented by this appeal is whether the claimant's separation from employment was a disqualifying event. It was.

Iowa Code section 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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The parties agree, and the administrative law judge concludes, that the claimant was discharged on August 25, 2005. In order to be disqualified to receive unemployment insurance benefits pursuant to a discharge, the claimant must have been discharged for disqualifying misconduct. The administrative law judge concludes that the employer has met its burden of proof to demonstrate by a preponderance of the evidence that the claimant was discharged for disqualifying misconduct. The facts are really not in dispute. No later than August 15, 2005, the claimant set up a new business recruiting truck drivers and placing them with carriers that competed with the employer as well as placing them with the employer. The claimant placed an ad on that day, August 15, 2005, in which he implied that the business was ongoing. The employer has policies providing for appropriate conduct and prohibiting conflicts of interest and requiring full disclosure upon a potential conflict of interest. The claimant received a copy of this policy and signed an acknowledgement therefore. The claimant did not inform the employer of his new business. Thus the claimant violated the policy at that point. The claimant testified that he did not believe that his new business was in conflict with the employer. The administrative law judge disagrees. The evidence is clear that the employer maintains an extensive effort to recruit drivers and it is difficult to find qualified drivers. The employer presently has three full-time recruiters looking for qualified drivers and the employer does not use an external recruiter. Certainly, if the claimant placed a driver with a competing carrier, the employer would not be able to recruit that driver. This is clearly a conflict of interest and violates the employer's policy. The fact that the claimant did not inform the employer of his business seems to indicate that he knew that it was a conflict or at least had a potential to be a conflict with the employer. Accordingly, the administrative law judge concludes that the claimant's business was a competing business in conflict with the employer and was a deliberate act constituting a material breach of his duties and obligations arising out of his worker's contract of employment and evinces a willful or wanton disregard of the employer's interest and is disqualifying misconduct.

In summary, the administrative law judge concludes that the claimant was discharged for disqualifying misconduct and, as a consequence, he is disqualified to receive unemployment insurance benefits. Unemployment insurance benefits are denied to the claimant, until or unless, he requalifies for such benefits.

DECISION:

The representative's decision of September 23, 2005, reference 01, is affirmed. The claimant, Brian S. Cruise, is not entitled to receive unemployment insurance benefits, until or unless he requalifies for such benefits, because he was discharged for disqualifying misconduct.

kkf/kjw