

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GENE A KRENZ
Claimant

APPEAL NO. 11A-UI-01553-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BARRON MOTOR INC
Employer

**OC: 12/26/10
Claimant: Appellant (2)**

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Gene Krenz filed an appeal from a representative's decision dated February 4, 2011, reference 01, which denied benefits based on his separation from Barron Motor, Inc. After due notice was issued, a hearing was held by telephone on March 8, 2011. Mr. Krenz participated personally and offered additional testimony from Ramona Krenz and Justin Krenz. The employer participated by Kim White, Human Resources Director. Exhibits One, Two, and Three were admitted on the employer's behalf.

ISSUE:

At issue in this matter is whether Mr. Krenz was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Krenz began working for Barron Motor, Inc. on September 4, 2001. He last performed services on October 8, 2010, at which point he was working full time as an out-of-town driver. He left work at that time because of continuing colon problems and the fact that he was scheduled to have surgery on November 1. He was placed on a leave of absence with the expectation that he would return to work on or about November 30.

On November 29, Mr. Krenz notified the employer that there had been complications following his surgery and that he would be unable to return at that time. He was asked to provide medical documentation of the need to be absent after November 30. On November 29, the employer received notification from Mr. Krenz' doctor indicating he would be released without restrictions effective December 16. He notified the employer on December 16 that he still could not return to work because of continuing problems with his surgical wound. He was told he had to either return to work on December 16 or provide medical documentation of the need to remain off work. He was not given a time frame by which he was to submit the documentation.

On December 17, the employer sent Mr. Krenz a letter advising that he was terminated because of his inability to return to work. He called the employer on December 21 and explained that the

prior doctor's statement releasing him on December 16 was in error. He had his doctor's office send a new statement, which indicated he was to continue on his 10-pound lifting restriction until seen by the doctor on January 7, 2011. This new statement was received by the employer on December 23. The employer did not take steps to rescind the discharge upon receipt of the corrected doctor's statement.

REASONING AND CONCLUSIONS OF LAW:

A voluntary quit is a separation initiated by the employee, whereas a discharge is a separation initiated by the employer. 871 IAC 24.1(113). The administrative law judge concludes that the employer initiated Mr. Krenz' separation when he was notified by the letter of December 17, 2010 that he no longer had employment. He had not given any indication that he did not plan to return to work once he recovered from his post-surgery complications. In fact, he spoke to the employer about possibly taking a different position upon his return. Because the employer initiated the separation, it is considered a discharge.

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code § 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. Krenz was discharged because he was unable to return to work at the end of his leave of absence. He was, in essence, discharged because of his attendance. An individual who was discharged because of attendance is disqualified from benefits if he was excessively absent on an unexcused basis. In order for an absence to be excused, it must be for reasonable cause and must be properly reported. 871 IAC 24.32(7). The administrative law judge is not bound by an employer's designation of an absence as unexcused. It appears undisputed that Mr. Krenz was absent beginning October 9 because of illness, surgery, and complications following surgery. The employer was kept informed of his status and was provided doctor's statements when requested. Because the absences were for medical reasons and were properly reported to the employer, they are excused absences.

Excused absences may not form the basis of a misconduct disqualification, regardless of how excessive. The administrative law judge appreciates that Mr. Krenz' doctor had stated he could return to work without restrictions as of December 16, 2010. However, it must be noted that the doctor's statement was written on November 29, over two weeks before Mr. Krenz was to return to work. It is a reasonable presumption that the doctor would not at that time have known of future complications. It is true that the employer requested additional medical documentation on December 16. However, Mr. Krenz was given no time frame by which he had to submit the additional documentation in order to preserve his employment. The letter of discharge was mailed to him the following day, before he had any real opportunity to obtain and submit the requested documentation.

For the reasons stated herein, the administrative law judge concludes that Mr. Krenz was discharged by Barron Motor, Inc. but disqualifying misconduct has not been established. While the employer may have had good cause to discharge him, conduct that might warrant a discharge will not necessarily sustain a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa App. 1983). Benefits are allowed.

DECISION:

The representative's decision dated February 4, 2011, reference 01, is hereby reversed. Mr. Krenz was discharged but misconduct has not been established. Benefits are allowed, provided he is otherwise eligible.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/pjs