

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROGER KRUGER
Claimant

APPEAL NO. 13A-UI-03390-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ALLAMAKEE COMMUNITY SCHOOL DIST
Employer

OC: 02/10/13
Claimant: Respondent (2-R)

Section 96.5(1) – Quit
Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The employer, Allamakee Community School District (Allamakee), filed an appeal from a decision dated March 12, 2013, reference 02. The decision allowed benefits to the claimant, Roger Kruger. After due notice was issued, a hearing was held by telephone conference call on April 23, 2013. The claimant participated on his own behalf with Janet Kruger and was represented by Erik Fern. The employer participated by Superintendent Dave Herold, Business Manager Janice Ray, Transportation Manager Randy Nordheim and Police Officer Chris McCartney.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits or quit work with good cause attributable to the employer.

FINDINGS OF FACT:

Roger Kruger was employed by Allamakee from April 30, 1987 until January 18, 2013 as a full-time school bus driver. On December 18, 2012, a school guidance counselor reported to Superintendent Dave Herold that a 16-year old female student had reported inappropriate conduct by Mr. Kruger that morning on the bus. Mr. Herold called the Waukon police department and Officer Chris McCartney came to investigate.

Transportation Director Randy Nordheim was sent to bring Mr. Kruger to the superintendent's office and he asked what it was about. The director said he did not know and the claimant then said it might have something to do with the student, whom he had hugged that morning.

The police officer interviewed Mr. Kruger and then the student. In the meantime Mr. Herold and Mr. Nordheim talked to Mr. Kruger and at first he denied any touching of the student, then admitted he had hugged her as he hugged other students, and then mentioned he was a "bad man." He was suspended with pay pending the outcome of the investigation.

All the statements were reviewed and on January 8, 2013, the superintendent notified the claimant by letter he would have the choice of resigning or the matter would have to be taken before the school board at its meeting on January 21, 2013. The claimant elected to resign effective January 18, 2013.

Mr. Kruger's testimony in the hearing was that the student had given him a Christmas card and gift and then gone to the back of the bus. Shortly afterward, before other students were picked up, she came forward and hugged and kissed him as he was driving. After dropping off the students at school the claimant did not report the incident to Mr. Nordheim, even though he was aware of the policy which requires drivers to report any such incidents between staff and students.

The student reported she had given Mr. Kruger the Christmas card and gift as he was a family friend and then he requested a hug and a kiss and put his arms around her.

Roger Kruger has received unemployment benefits since filing a claim with an effective date of February 10, 2013.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5-1 provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

871 IAC 24.26(21) provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(21) The claimant was compelled to resign when given the choice of resigning or being discharged. This shall not be considered a voluntary leaving.

The claimant cannot be considered to be a voluntary quit under the provisions of the above Administrative Code section. If he had not resigned then he would have been discharged.

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.

The claimant acknowledged to Mr. Nordheim and Officer McCartney that some physical contact had occurred between him and the student. He also acknowledged he knew the policy required him to report any such incidents to his supervisor and he did not do so. He could not present any explanation why the student would fabricate such an allegation against him.

The claimant is guilty of misconduct either by touching a student inappropriately or by not reporting her alleged conduct toward him. The policies either way are to protect the students and the staff in cases such as this. The student reported, the claimant did not. The claimant's admission to Mr. Nordheim is very persuasive. The administrative law judge concludes the claimant inappropriately touched a student on his bus which is against policy. It could have exposed the claimant and the school district to civil and legal liabilities. This is a violation of the duties and responsibilities the employer has the right to expect of an employee and conduct not in the best interests of the employer. The claimant is disqualified.

The employer's assessment of credibility was based on the fact the student's story did not change but the claimant's did.

DECISION:

The representative's decision of March 12, 2013, reference 02, is reversed. Roger Kruger is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount in insured work, provided he is otherwise eligible. The issue of whether the claimant must repay the unemployment benefits is remanded to UIS division for determination.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/tll