

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**STEVE R KIRSTEIN**  
Claimant

**APPEAL NO. 08A-UI-06281-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**NORTHLAND PRODUCTS CO INC**  
Employer

**OC: 06/08/08 R: 02  
Claimant: Respondent (2)**

Section 96.5(2)a – Discharge  
Section 96.3(7) – Overpayment

**STATEMENT OF THE CASE:**

The employer, Northland Products, filed an appeal from a decision dated June 30, 2008, reference 01. The decision allowed benefits to the claimant, Steve Kirstein. After due notice was issued, a hearing was held by telephone conference call on July 23, 2008. The claimant participated on his own behalf. The employer participated by Vice Controller Gerd McShane, Executive Vice President Eric Petersen and Plant Manager Mike Notermann.

**ISSUE:**

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

**FINDINGS OF FACT:**

Steve Kirstein was employed by Northland Products from February 7, 2007 until June 5, 2008 as a full-time driver. He had been counseled by Executive Vice President Eric Petersen and other supervisors throughout the course of his employment about his attitude. He was very confrontational and complained a great deal about the employer, its policies and procedures.

On May 20, 2008, the claimant called Mr. Petersen and asked for a copy of the non-compete agreement he had signed. The employer said he would provide it and they agreed the claimant would come to the office at 9:00 a.m. the next day to pick it up. He had not arrived by 9:30 a.m. and Mr. Petersen left because he had another commitment. At 12:30 p.m. Mr. Kirstein called Mr. Petersen demanding to know why he had not provided the copy, and the employer said he would provide it to him if he stopped by the office around 3:00 p.m. so they could talk about it.

The claimant did appear at the office at that time and confronted Mr. Petersen in the hallway outside his office. The employer said he would give him the copy but he did not “like [his] attitude.” Mr. Kirstein said he did not care for the employer’s attitude, either. Mr. Petersen then said he did not intend to discuss this entire matter in the presence of the entire office, an open area in which approximately six other people worked, and said they should go outside. Mr. Kirstein began to walk out the door but then stopped in the middle of the office and said they

were to discuss in "right there" in front of everyone. He was again asked to stop outside and again refused.

Mr. Kirstein had become loud and belligerent and Mr. Petersen, and others who were present, began to feel threatened. The claimant was then ordered out of the office and did step outside, but then turned as if to come back in. The employer told him if he stepped back in the police would be called, and then was ordered off the property. Mr. Petersen escorted him to the company truck to remove his personal items and asked Plant Manager Mike Notermann to give the claimant a ride home, which the claimant did not accept.

The employer sent the claimant a letter the next day notifying him he was suspended for two weeks as a disciplinary matter and his employment status would be assessed at the end of that time. The claimant's conduct and attitude throughout his employment was reviewed with various managers and supervisors, and the consensus was the claimant's attitude was generally uncooperative, negative and confrontational. Mr. Kirstein was sent a letter on June 10, 2008, notifying him he was discharged.

Steven Kirstein has received unemployment benefits since filing a claim with an effective date of June 8, 2008.

#### **REASONING AND CONCLUSIONS OF LAW:**

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 was discharged for insubordination and threatening behavior. Although he never actually threatened physical harm to anyone, his entire loud and combative attitude in the office created a hostile environment where Mr. Petersen and other people felt threatened. He had been talked to before about his attitude and behavior but did not modify his behavior. The employer has the obligation to provide a safe and harassment-free work environment for all employees and the claimant's conduct interfered with its ability to do so. This is conduct not in the best interests of the employer and the claimant is disqualified.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The claimant has received unemployment benefits to which he is not entitled. These must be recovered in accordance with the provisions of Iowa law.

**DECISION:**

The representative's decision of June 30, 2008, reference 01, is reversed. Steve Kirstein is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount, provided he is otherwise eligible. He is overpaid in the amount of \$1,041.00.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

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