

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHAEL L RUARK
Claimant

APPEAL NO. 12A-UI-10943-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

KIMBERLY CHRYSLER PLYMOUTH INC
Employer

OC: 08/12/12
Claimant: Respondent (1)

Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The employer filed an appeal from the August 30, 2012 (reference 01) decision that allowed benefits. After due notice was issued, a hearing was held by telephone conference call on October 30, 2012. Claimant participated. Employer participated through parts and service director, Kevin House and owner, Dale Zude and was represented by Robin Quon of Employers Unity.

ISSUE:

Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a service manager and was separated from employment on August 13, 2012.

A technician's father-in-law traded a vehicle in with a preexisting mechanical condition when it was transferred to the dealership. He had used a BG engine oil additive only once at a cost of \$5.00. The warranty guidelines require use at every oil change and within 5,000 miles or four months of the last use. The dealership made a claim for repair of the engine. BG representative Doug Lake knew about preexisting condition and told claimant he knew it was a gray area for warranty guidelines coverage of the claim but the company would contribute \$1,500.00 towards the claim. Claimant told him that he understood that the claim was not covered under the warranty guidelines but indicated the employer would accept a goodwill contribution. The technician donated his hours to repair the engine and BG paid the dealership \$840.06 for the parts. Claimant was concerned that if the dealership abused the warranty program, it risked losing the product program. House described the events as a "sticky situation" of trying to get the engine fixed without using dealership's money. The employer did not know when the additive was added, when the ownership of the vehicle was transferred, or when the repair was made. The ticket was opened on July 16 and finalized and paid on August 14, 2012. The employer became aware of the situation and asked House to investigate the last week of July. House spoke to Lake and the technician and looked at the paperwork but

did not confront claimant. House was on vacation the week before the discharge and he delayed in discharging claimant so he could fill the position and train. Zude told claimant he was separated because the employer was eliminating his job, not because of the BG issue. House eventually took over claimant's job duties. Lake told claimant he felt forced to sign the letter employer read into the record. The letter was not on BG letterhead.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason.

Iowa Code § 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.

871 IAC 24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to

unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). A lapse of 11 days from the final act until discharge when claimant was notified on the fourth day that his conduct was grounds for dismissal did not make the final act a "past act." *Greene v. Emp't Appeal Bd.*, 426 N.W.2d 659 (Iowa 1988).

In an at-will employment environment an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job-related misconduct as the reason for the separation, employer incurs potential liability for unemployment insurance benefits related to that separation. Claimant acted in good faith in an attempt to protect the employer's integrity and relationship with BG and its representative. This is not misconduct. Even had this been considered misconduct, since the employer knew of the incident the last week of July, its investigation was minimal and did not include interviewing the claimant, Zude gave claimant a different reason for the separation, and House delayed the separation for two weeks in order to find and train claimant's replacement (House), the act for which the claimant was discharged was no longer current. Because the act for which the claimant was discharged was not current and the claimant may not be disqualified for past acts of misconduct, benefits are allowed.

DECISION:

The August 30, 2012 (reference 01) decision is affirmed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/css