

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DANIEL J KRAUS
Claimant

APPEAL NO. 11A-UI-11998-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WELLS ENTERPRISES INC
Employer

OC: 08/07/11
Claimant: Respondent (2-R)

Section 96.5-2-a – Discharge
Section 96.3-7 – Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from a representative's decision dated September 2, 2011, reference 01, which found the claimant eligible to receive unemployment insurance benefits. After due notice was issued, a telephone hearing was held on October 6, 2011. Although duly notified, the claimant did not respond to the notice of hearing and did not participate. The employer participated by Beverly Lamb, hearing representative, and witnesses Brittany Sickels, human resource generalist, and John Schoenfelder, production supervisor. Employer's Exhibits A and B were received into evidence.

ISSUE:

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

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Daniel Kraus was employed by Wells Enterprises, Inc. from February 28, 2011, until August 5, 2011, when he was discharged from employment. Mr. Kraus held the position of full-time production worker and was paid by the hour. His immediate supervisor was John Schoenfelder.

Mr. Kraus was discharged from his employment with Wells Enterprises, Inc. after he engaged in disruptive behavior on the production line on July 30, 2011. At that time, the claimant became upset and was yelling, using inappropriate language, and disrupting other workers. The employer was alerted to the situation based upon the complaints made by other workers about Mr. Kraus's conduct.

Because the claimant had been specifically warned for similar conduct in the past, a decision as made to terminate Mr. Kraus from his employment.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the employer has sustained its burden of proof in establishing job-related misconduct sufficient to warrant the denial of unemployment insurance benefits. It has.

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 employer has the burden of proof in this matter. See Iowa Code section 96.6-2. Misconduct must be substantial in order to justify a denial of unemployment benefits. The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa App. 1992).

The evidence in this matter establishes that Mr. Kraus was discharged from his employment when he became unreasonably angry and disruptive, using inappropriate language on the production floor after being specifically warned in the past not to engage in that type of conduct.

The employer has a right to expect decency and civility from its employees, and an employee's repeated loss of temper and the use of profanity or offensive language in a disrespectful or name-calling context may be recognized as misconduct disqualifying the employee from the receipt of unemployment insurance benefits. See Henecke v. Iowa Department of Job Service, 533 N.W.2d 573 (Iowa App. 1995). Even an isolated instance of profanity or inappropriate behavior can constitute misconduct and warrant disqualification from unemployment benefits if it serves to undermine a supervisory authority. See Deever v. Hawkeye Window Cleaning, Inc. 447 N.W.2d 418 (Iowa App. 1989). Because the claimant had engaged in the same inappropriate conduct after being specifically warned by the employer, the administrative law judge concludes that the claimant's discharge took place under disqualifying conditions. Unemployment insurance benefits are withheld.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. 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.

b. (1) 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. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The issue of whether the claimant must repay unemployment insurance benefits is remanded to the Unemployment Insurance Services Division for a determination.

DECISION:

The representative's decision dated September 2, 2011, reference 01, is reversed. The claimant is disqualified. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he meets all other eligibility requirements of Iowa law. The issue of whether the claimant must repay unemployment insurance benefits is remanded to the Unemployment Insurance Services Division for a determination.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw