

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MORGAN L JENSEN
Claimant

APPEAL NO. 06A-UI-09053-N

**ADMINISTRATIVE LAW JUDGE
AMENDED DECISION**

**SCHILDBERG CONSTRUCTION
COMPANY INC**
Employer

**OC: 08/13/06 R: 01
Claimant: Respondent (2)**

Section 96.5-2-a – Discharge for Misconduct
Section 96.3-7 - Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the September 6, 2006, reference 01, fact-finder's decision that found the claimant qualified to receive unemployment insurance benefits because the claimant was not discharged for willful or deliberate misconduct. After hearing notices were mailed to the parties a hearing was conducted in Council Bluffs, Iowa, on October 11, 2006, at which time the claimant appeared and testified. Appearing as witnesses for the employer were Catherine Shere, Personnel Director and Gary Jameson, Supervisor. Exhibit One was received into evidence.

ISSUES:

Did the claimant voluntary leave employment for reasons that qualify him to receive unemployment insurance benefits? Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

Having reviewed all the evidence in the record the administrative law judge finds the following facts: Mr. Jensen was employed by Schildberg Construction Company from April 15, 2005 until August 17, 2006. The claimant worked as a quarry truck driver on a full-time basis and was paid by the hours. The claimant's immediate supervisor was Gary Jameson.

Mr. Jensen was discharged from his job as a quarry truck driver based upon repeated negligence of carelessness in the performance of his duties and because the claimant had to failed to inform his supervisor that he was taking prescription medication that could effect is driving.

A decision was made to terminate Mr. Jensen after the employer reasonably concluded that the claimant had been careless in the operation of his dump truck causing damage to company equipment on August 16 and 17, 2006. On August 16, 2006, the frame on a company sorting/crushing bin was damaged causing conveyor belts to malfunction. Based upon the nature of the damage and the fact that Mr. Jensen was the only vehicle operating in the bins

proximity, the employer reasonably concluded that Mr. Jensen had damaged the bin. The following day after the bin had been repaired Mr. Jensen failed to set the brakes on his dump truck allowing the vehicle to back into the bin once again causing damage and disruption of work.

The claimant had been warned verbally on a number of occasions with respect to carelessness and the manner that he performed his work. The claimant received an official warning from the company on August 12, 2006 when the company believed that his lack of attention to work caused sorting screens to be improperly placed disrupting work.

The claimant is unaware of any damage that he had caused on August 16, 2006. The claimant "forgot" to set the brakes on his quarry dump truck on August 17, 2006. While explaining the possible reasons for the mishaps, Mr. Jensen informed the employer that he had been taking antidepressant medicine. Mr. Jensen told the company it had effected his abilities but the claimant did not report taking the prescription medication before or at the time it was occurring in violation of company policy.

REASONING AND CONCLUSIONS OF LAW:

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.

In this case the testimony is disputed. The administrative law judge having observed the parties, having heard the testimony and reviewed the record finds that the claimant was discharged under disqualifying conditions.

The hearing record establishes that Mr. Jensen was aware of the company's expectations and the requirement that he report taking any prescription medications that could effect his physical or mental ability. The claimant was discharged after was involved in two mishaps on two consecutive days when the employer reasonably concluded that Mr. Jensen's negligence or carelessness had caused damage to company equipment and had resulted in substantial production downtime. The hearing record establishes that the claimant had been verbally counseled and warned in writing about his carelessness and negligence prior to his discharge. The administrative law judge finds that the evidence establishes by a preponderance that the

claimant's negligence or carelessness caused the damage to company equipment on August 16, 2006. It is undisputed that Mr. Jensen's negligence once again caused the damage to the bin the following day, August 17, 2006. While it is clear that Mr. Jensen did not intentionally damage company equipment, his reoccurring negligence or carelessness was of such a nature and reoccurrence to establish culpability. The claimant was also aware that he had a responsibility to report to the company if he was taking and medications that could effect his mental or physical ability to perform his duties, but did not do so.

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 benefits to which he was not entitled.

DECISION:

The Agency representative's decision dated September 6, 2006, reference 01, is reversed. The claimant was discharged for misconduct. The claimant is disqualified from receiving unemployment insurance benefits until he has worked in and has been wages in insured work equally ten times his weekly benefit allowance, providing that he meets all other eligibility requirements. The claimant has been overpaid \$2,556.00.

Terence Nice
Administrative Law Judge

Decision Dated and Mailed

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