

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RYAN LEEMAN
Claimant

APPEAL NO: 09A-UI-17404-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

J R MOTORSPORTS LTD
Employer

OC: 10/18/09
Claimant: Respondent (2/R)

Iowa Code § 96.5(2)(a) - Discharge for Misconduct
Iowa Code § 96.3-7 - Overpayment

STATEMENT OF THE CASE:

J R Motorsports, Ltd. (employer) appealed an unemployment insurance decision dated November 9, 2009, reference 01, which held that Ryan Leeman (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on December 29, 2009. The claimant participated in the hearing. The employer participated through David Johnson, Pat Graham, and Randy Havlik. Employer's Exhibits One through Three were admitted into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

The issue is whether the employer discharged the claimant for work-related misconduct?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a full-time salesman from November 27, 2006 through October 16, 2009 when he was discharged for a repeated and ongoing violation of company policy. The employer has an employee purchase policy which allows employees to buy items that the company manufactures or purchases from outside vendors at a cost of 15 percent over company cost or dealer pricing, whichever is lower. Cost is the most recent acquisition price plus any cost of freight or other charges as determined by the purchasing department and all special order freight will be charged to the employee. Employees must pay for their purchases at the time of receipt unless an employee credit application has been completed. Employees can charge a purchase with prior approval from a supervisor and the supervisor must write up the employee purchase. All charge purchases were originally required to be paid in full by the fifteenth of the following month but the date was subsequently changed to the tenth of every month. Violation of the employee purchase policy will subject the employee to suspension or termination. The claimant signed an acknowledgement of the employer's policies on November 26, 2006.

The claimant violated the employee purchase policy by not paying off his charges in full by the following months after his purchases. He carried a balance on his account from October 1, 2008 through October 12, 2009, except for a two-week period ending December 19, 2008. During this timeframe, his typical balance ran anywhere from \$4,000.00 to \$5,000.00 and his highest amount was \$5,902.06 on April 19, 2009. Manager Pat Graham frequently spoke to the claimant about how he was going to get his account current and each time he said he would get it taken care of soon. In June 2009, Owner David Johnson discussed the problem with the claimant and asked him if he had ever asked to have his account terms extended. The claimant had never obtained authorization to do so and Mr. Johnson advised him that his actions could result in suspension or termination. Mr. Johnson advised the claimant he could not charge any more purchases until his account was current. The claimant brought his debt down from \$4,537.70 to \$2,970.75 on June 30, 2009 but he continued purchasing items through July 2009.

Mr. Johnson again spoke with the claimant in August 2009 and advised him he had to get his account current. The claimant paid \$1,850.00 on his account that month but then charged \$1,147.88 on his account during September 2009. He only made a payment of \$750.00 during September 2009. Mr. Johnson spoke with the claimant in early October 2009 and told him he would be suspended or terminated if his charge balance was not paid. He spoke with the claimant a week after that and asked him what his plans were to pay off the account. The claimant said he did not have a plan but would talk to his brother and would give the employer a plan on the next day. Mr. Johnson directed the claimant to call him on the following day but the claimant did not make that call. Two days later, Mr. Johnson called the claimant and asked why he had not called and the claimant stated he forgot. The employer asked him if he had a payment plan figured out and the claimant did not have one but said he could probably pay \$400.00 that week. He owed a balance of \$2,911.45 on October 12, 2009 and was discharged on October 16, 2009.

The claimant filed a claim for unemployment insurance benefits effective October 18, 2009 and has received benefits after the separation from employment.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a.

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.

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The claimant was discharged on October 16, 2009 for a blatant and repeated violation of company policy. He continued to violate company policy even after being warned on numerous occasions. The claimant's conduct shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

Iowa Code § 96.3(7) provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. The overpayment recovery law was updated in 2008. See Iowa Code § 96.3(7)(b). Under the revised law, a claimant will not be required to repay an overpayment of benefits if all of the following factors are met. First, the prior award of benefits must have been made in connection with a decision regarding the claimant's separation from a particular employment. Second, the claimant must not have engaged in fraud or willful misrepresentation to obtain the benefits or in connection with the Agency's initial decision to award benefits. Third, the employer must not have participated at the initial fact-finding proceeding that resulted in the initial decision to award benefits. If Workforce Development determines there has been an overpayment of benefits, the employer will not be charged for the benefits, regardless of whether the claimant is required to repay the benefits.

Because the claimant has been deemed ineligible for benefits, any benefits the claimant has received could constitute an overpayment. Accordingly, the administrative law judge will remand the matter to the Claims Division for determination of whether there has been an overpayment, the amount of the overpayment, and whether the claimant will have to repay the benefits.

DECISION:

The unemployment insurance decision dated November 9, 2009, reference 01, is reversed. The claimant is not eligible to receive unemployment insurance benefits because he was discharged from work for misconduct. Benefits are withheld until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The matter is remanded to the Claims Division for investigation and determination of the overpayment issue.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/css