

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KURT N RASMUSSEN

Claimant

APPEAL NO. 11A-UI-04358-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

KAREN MALMEN

BIG RIVER EQUIP CO INC

Employer

OC: 04/26/09

Claimant: Appellant (2)

Section 96.5-2-A – Discharge for Misconduct

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated March 30, 2011, reference 03, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on April 28, 2011. Claimant participated. Employer participated by Chad Klein, Service Manager. The record consists of the testimony of Chad Klein; the testimony of Kurt Rasmussen; and Claimant's Exhibits A-B. Official notice is taken of agency records and the administrative law judge decision in 11A-UI-00903-PT filed on March 5, 2011.

ISSUE:

Whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer is a material handling/forklift dealership located in Hiawatha, Iowa. The claimant was hired on November 15, 2010, as a full-time service technician. The claimant's last day of work was December 9, 2010. The claimant was terminated on January 13, 2011.

The claimant was terminated for what the employer deemed to be dishonesty. The claimant reported that he hurt his knee while at work on December 9, 2010. The claimant had had problems with his knee in the past and told Chad Klein about these pre-existing problems when he reported the injury. The claimant went to the community health center, where he had been previously seen, on December 10, 2010. The claimant said he was summarily dismissed by the clinic although the claimant later produced a slip that returned him to work with restrictions on January 13, 2011. Chad Klein had agreed to keep the claimant's job open while he had his knee condition treated although the parties do not agree on how long the job would remain open.

The parties do not agree on whether the claimant kept the employer informed on his status. The claim was turned into the employer's worker's compensation insurance carrier and denied. The claimant did give the employer a return to work slip dated January 13, 2011, with light-duty restrictions. The claimant was terminated and no light duty was provided.

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.

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.

Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. One of the most fundamental duties owed by an employee to his employer is honesty. An employer can reasonably expect that an employee will be truthful in matters relating to employment. The employer has the burden of proof to show misconduct.

Reliable evidence upon which to make a decision is scant in this case. It is impossible to reconcile the testimony of the witnesses as to what was said and when. Mr. Klein testified that he terminated the claimant because Mr. Klein felt that the claimant had told him too many lies about his medical condition; what happened and when with his knee; the treatment he received;

and when he would be back to work. He also felt that there was a total lack of communication from the claimant after the injury and when he produced the return to work slip dated January 13, 2011.

About all that can be determined for certain is that the claimant's last day of work was December 9, 2010. He told Mr. Klein that he had hurt his knee. He also made a comment to Mr. Klein that he had had knee problems in the past. From that point on, the sequence of events is most unclear. Mr. Klein apparently did not feel that this was a worker's compensation claim and directed the claimant to the community health clinic. The claimant had been there previously and had had an MRI done on his knee. The claimant said that he was not really given any medical attention at the clinic and that he applied for state assistance so that he could be seen at the University of Iowa. Why this was not handled as a worker's compensation claim initially is not clear. At some point the employer worker's compensation insurance carrier was notified and an investigation was done. The claimant's claim for worker's compensation benefits was ultimately denied by the insurance carrier.

The claimant also filed for unemployment insurance benefits since he believed that he was on a temporary layoff while he got his knee fixed. The employer claimed that the claimant was not able and available for work. In 11A-UI-00903-PT, filed on March 5, 2011, the administrative law judge ruled that the claimant was able and available for work, even though he could not work for the employer.

The parties sharply disagree on just how long the job was to be left open and how informed Mr. Klein was to be kept. The claimant said he called every week. Both parties bear some responsibility for the breakdown in communications, which in turn led to the termination. Based on the termination report signed by Mr. Klein on January 13, 2011, the reason for the decision was based on the failure of the claimant to submit any paperwork. (Exhibit B)

After considering all of the testimony and weighing the credibility of the witnesses, the administrative law judge concludes that there is insufficient evidence in this record to conclude that the claimant was discharged for misconduct. The administrative law judge appreciates the employer's frustration about the lack of information, but there was also a failure by the employer to specify what type of information should be transmitted and when. The employer had the burden of proof to show misconduct. Since that burden was not sustained, benefits are allowed if the claimant is otherwise eligible.

DECISION:

The decision of the representative dated March 30, 2011, reference 03, is reversed. Unemployment insurance benefits are allowed, provided claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/css