

IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI

ANDREW A KRIEGER  
406 S ELM ST  
NEW LONDON IA 52645 1620

SONIC ENTERPRISES LLC  
702 – 3<sup>RD</sup> AVE SE  
WAUKON IA 52172

Appeal Number: 06A-UI-01156-DWT  
OC: 01/01/06 R: 04  
Claimant: Appellant (2)

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Andrew A. Krieger (claimant) appealed a representative's January 25, 2006 decision (reference 02) that concluded he was not qualified to receive unemployment insurance benefits, and the account of Sonic Enterprises LLC (Employer) would not be charged because the claimant had been discharged for disqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 15, 2006. The claimant participated in the hearing with his witness, Hutch Stearn. Rich Dreckman, the owner, and Sherry Donald, the manager, appeared on the employer's behalf. 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:

Did the claimant voluntarily quit his employment for reasons that do not qualify him to receive unemployment insurance benefits, or did the employer discharge him for work-connected misconduct?

FINDINGS OF FACT:

The claimant had been working a specific route as a driver for another employer (My Type, Inc.) prior to November 21, 2005. When the employer took over the contract on November 21, the claimant continued working for the employer and drove the route he had always driven. As a new employee, the employer considered the claimant a 90-day probationary employee and the employer's insurance company reviewed the claimant's driving record to make sure he was insurable. The employer's insurance company determined the claimant was not insurable. The insurance company sent the employer a letter indicating that by January 1, 2006, the claimant could not drive any of the employer's vehicles.

The employer informed the claimant about the insurance problem. In an attempt to keep his job, the claimant made arrangements to personally buy a \$150,000.00 insurance policy that would cover him when he drove for the employer. Initially, the employer believed this additional coverage resolved the claimant's employment problem. A few days later the employer told the claimant he had to obtain a million dollar insurance policy because he was driving a commercial vehicle. The claimant could not afford the premium for this coverage amount. The employer tried to find an alternative insurance policy that covered the claimant when he drove for the employer. As of December 27, it was doubtful the employer could make find another insurance company that would cover the claimant so he could continue driving for the employer. The employer told the claimant that it was probably in his best interest to find another job.

The claimant did not want to drive if he was not covered by the employer's insurance policy. The claimant repeatedly asked Donald and Dreckman if he was covered. Donald could not tell the claimant anything. The claimant asked Dreckman to put in writing that the claimant was insured while he drove for the employer. Dreckman would not confirm in writing the claimant was covered by the employer's insurance policy.

On December 28, the claimant asked to be assigned to a route where another person drove and the claimant would load and unload the truck. The employer did not have a job like this available for the claimant to do. The claimant indicated that if the employer could not show him he was covered by the employer's insurance company, the claimant could not drive. Although the employer received a letter from its insurance company indicating the claimant could drive until January 1, 2006, the claimant did not know about this letter. Donald told the claimant he was discharged if he would not drive his route. After Donald told the claimant he was discharged, the claimant left work. The claimant did not work after December 28, 2005.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if a claimant voluntarily quits employment without good cause or an employer discharges him for reasons constituting work-connected misconduct. Iowa Code §§96.5-1, 2-a. After the claimant learned the employer's insurance company would not insure him, he took reasonable steps to keep his job. Even though the claimant asked for a written statement confirming he was covered under the

employer's insurance policy, the employer would not provide the claimant with this written statement. The employer even told the claimant that his best option was to find another job.

The claimant could have worked until January 1, 2006, but the employer failed to provide him a note stating he was covered under the employer's insurance policy on December 28, 29 and 30. The claimant's request for verification of insurance coverage was reasonable. The claimant did not quit his employment because he offered his continued services by loading unloading trucks. The employer discharged the claimant when he declined to work as a driver without proof he was covered by the employer's insurance.

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 propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute-work-connected misconduct. 871 IAC 24.32(1)(a).

The employer discharged the claimant because the employer only had work for a driver, not a person who would only load and unload items. The claimant wanted reasonable assurance that he was insured while driving the employer's vehicles and was justified in declining to drive when the employer would not confirm in writing he was insured. Also, the evidence indicates the claimant could not have worked; for the employer after January 1, 2006, because it was highly unlikely the employer could find an insurance carrier that would cover the claimant when he drove the employer's vehicle. The employer discharged the claimant for compelling business reasons. Under the facts of this case, the claimant did not commit work-connected misconduct. Therefore, as of January 1, 2006, the claimant is qualified to receive unemployment insurance benefits.

#### DECISION:

The representative's January 25, 2006 decision (reference 02) is reversed. The employer discharged the claimant for reasons that do not constitute work-connected misconduct. As of January 1, 2006, the claimant is qualified to receive unemployment insurance benefits, provided he meets all other eligibility requirements. During the claimant's current benefit year, the employer's account will not be charged.

dlw/s