

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHAEL J FOLEY
Claimant

APPEAL NO: 14A-UI-10788-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

KRYGER GLASS COMPANY
Employer

OC: 09/07/14
Claimant: Respondent (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the October 6, 2014, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on November 5, 2014. The claimant participated in the hearing. Sheri Sealock, Human Resources Manager; Scott Anderson, Director of Sales and Operations; and Claire Stein, Employer Representative; participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time inside sales representative for Kryger Glass Company from August 12, 2013 to September 10, 2014. The employer underwent management changes in the spring of 2014 and all managers were replaced. Scott Anderson, new Director of Sales and Operations, met with each employee in late May 2014 and asked what they wanted to do in the future. The claimant responded that he would possibly like to get into the insurance business. Mr. Anderson then began the hiring process, unbeknownst to the claimant, and hired a replacement for the claimant. On September 10, 2014 the claimant was scheduled to meet with Mr. Anderson and thought he was going for his annual performance review. Instead, Mr. Anderson notified the claimant his employment was being terminated because he was actively seeking other employment. The claimant was not looking for another job at that time.

On September 23, 2014 the employer received a phone call from the claimant's attorney stating the claimant had a new job and wanted to verify the terms of his non-compete and separation agreement. The employer agreed to release the claimant from the non-compete agreement with the understanding the claimant's unemployment benefits would cease.

The claimant claimed and received benefits for the three weeks ending September 27, 2014.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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.

Iowa Admin. Code r. 871-24.32(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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Dep't of Job Serv., 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proving disqualifying misconduct. 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 substantial and 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).

The new manager asked the claimant an open ended question of what he wanted to do in the future. He did not ask what the claimant wanted to do in the future with the employer or narrow the scope of his question in any way. The conversation occurred soon after the employer hired an entirely new management staff and when employees did not necessary know if their

employment was secure. The claimant honestly answered that he would “possibly like to get into insurance” and from that one comment the employer determined the claimant was “actively looking for other employment.” Without the claimant’s knowledge, the employer then embarked on the interviewing and hiring process and after finding a replacement for the claimant it unceremoniously terminated his employment. The claimant was not looking for other work and had not found other work at the time of his termination. Even if he had looked for other employment, that is not considered work-related misconduct. The claimant was discharged for no disqualifying reason.

The employer testified it was appealing the claimant’s receipt of benefits because he originally signed a non-compete agreement and after he found new employment his attorney called the employer to clarify the terms of that agreement. The employer released the claimant from the non-compete agreement on the condition the claimant ceased filing for unemployment insurance benefits. The claimant started his new job and did not file for unemployment after the week ending September 27, 2014 following his attorney’s phone call to the employer September 23, 2014.

While those events took place after the separation and do not affect the claimant’s receipt of unemployment insurance benefits, the employer should know its actions were possibly illegal in that Iowa Code section 96.15(1) states;

1. *Waiver of rights void.* Any agreement by an individual to waive, release, or commute the individual’s rights to benefits or any other rights under this chapter shall be void. Any agreement by any individual in the employ of any person or concern to pay all or any portion of an employer’s contributions, required under this chapter from such employer, shall be void. No employer shall directly or indirectly make or require or accept any deduction from wages to finance the employer’s contributions required from the employer, or require or accept any waiver of any right hereunder by any individual in the employer’s employ. Any employer or officer or agent of an employer who violates any provision of this subsection shall, for each offense, be guilty of a serious misdemeanor. (Emphasis added).

DECISION:

The October 6, 2014, reference 01, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

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