

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHAEL L TECHAU
Claimant

APPEAL NO. 08A-UI-02347-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**DELANEY CONCRETE CONSTRUCTION
COMPANY INC**
Employer

OC: 01/06/08 R: 03
Claimant: Respondent (4)

Section 96.4(3) – Able and Available
Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Delaney Concrete Construction Company, Inc. (Delaney) filed an appeal from a representative's decision dated March 6, 2008, reference 01, which held that Michael Techau satisfied the availability requirements of the law. After due notice was issued, a hearing was held by telephone on March 25, 2008. The employer participated by Bill Jensen, Controller. Exhibits One and Two were admitted on the employer's behalf. Mr. Techau did not respond to the notice of hearing.

ISSUE:

At issue in this matter is whether Mr. Techau was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony of the witness and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Techau began working for Delany and Kelly, the predecessor to Delany Concrete Construction Company, Inc., in 1999. He was employed full time operating a saw. He was laid off for the season on or about December 8, 2007. Mr. Techau was not at that time given a specific date on which he was to return to work.

The employer's work usually resumes in March or April of each year. Mr. Techau will not be recalled to work with Delaney because of his actions during the layoff. The employer received its bill from Linn Co-Op Company on or about February 15, 2008. The bill revealed that Mr. Techau had been purchasing gas during the layoff for the company vehicle assigned to him. He made gas purchases totaling \$568.50 during the period from January 5 through February 8, 2008. During that time frame, he only worked on January 9, 10, and 11, for a total of slightly less than nine hours. Mr. Techau was not to use the company vehicle for personal trips or errands and had been warned about it in the past.

When questioned by the employer, Mr. Techau acknowledged using the company vehicle for personal use and making the gas purchases identified on the bill. He indicated he could not afford to pay for his own gas. On or about February 15, Mr. Techau was told he no longer had a job as a result of his actions. He has not claimed job insurance benefits since the week ending February 9, 2008.

REASONING AND CONCLUSIONS OF LAW:

Mr. Techau filed a claim for benefits effective January 6, 2008, due to a seasonal layoff from Delaney. His separation at that point was for no disqualifying reason. As of the date of the hearing held on March 25, he had not been recalled from the layoff. Since he and others had not been recalled to work, he was still unemployed due to the seasonal layoff. The discharge would be effective when work resumes.

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Mr. Techau was discharged for using the company vehicle for personal trips and charging the employer for gas consumed in his personal usage. His actions constituted theft, which is clearly contrary to the type of behavior an employer has the right to expect. Inasmuch as substantial misconduct has been established, benefits are denied.

Mr. Techau has not claimed benefits since the week ending February 9, 2008, which was prior to when he was notified of his discharge. Because the employer usually resumes work for the season in March or April, the administrative law judge concludes that the effective date of Mr. Techau's disqualification should be March 30, 2008.

DECISION:

The representative's decision dated March 6, 2008, reference 01, is hereby modified. Mr. Techau is allowed benefits effective January 6, 2008, as he was unemployed due to a seasonal layoff. Benefits are withheld effective March 30, 2008, as he was discharged for misconduct in connection with his employment. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he satisfies all other conditions of eligibility.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/kjw