

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RONNIE LARSON
Claimant

APPEAL NO: 11A-UI-08856-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

JENSEN IMPORTS INC
c/o **LINDA MANSFIELD**
Employer

OC: 06/05/11
Claimant: Respondent (2/R)

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

STATEMENT OF THE CASE:

Jensen Imports, Inc. (employer) appealed an unemployment insurance decision dated June 28, 2011, reference 01, which held that Ronnie Larson (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 July 28, 2011. The claimant participated in the hearing. The employer participated through Linda Mansfield, Office Manager. Employer's Exhibits One through Eight 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 claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

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 service technician from February 7, 2011 through June 3, 2011. He was discharged for repeated negligence even after being warned. The claimant moved a truck into the service department on March 15, 2011 and dented the cab corner which cost over \$2,000.00 in damages. He completed an oil change on a 2004 Mazda on April 19, 2011 but incorrectly installed the oil filter so the car subsequently lost all its oil and the engine was ruined. It cost approximately \$4,700.00 to replace the engine. The owner's daughter locked her keys in her car and the claimant dented the vehicle roof when he tried to open the car. The employer issued the claimant a written reprimand on May 9, 2011 addressing the three incidents and advising him that further incidents could result in his termination.

The claimant also broke the left door glass on a vehicle and it had to be replaced on May 5, 2011. This incident was not included in the written reprimand. However, the negligence

continued and the claimant failed to replace an oil cap on May 19, 2011 but fortunately the customer discovered it and brought it back. On May 31, 2011 the claimant broke the rear air conditioner line on a 2008 GMC when he failed to put the car lift on the frame properly. A customer brought back their 2011 Mazda back on June 2, 2011 after having discovered the oil cap was left off from an oil change on April 5, 2011. The employer had no other option than to discharge the claimant on June 3, 2011.

The claimant filed a claim for unemployment insurance benefits effective June 5, 2011 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 June 3, 2011 for repeated negligence. Negligence does not constitute misconduct unless recurrent in nature; a single act

is not disqualifying unless indicative of a deliberate disregard of the employer's interests. *Henry v Iowa Department of Job Service*, 391 N.W.2d 731 (Iowa App. 1986). A series of accidents attributable to negligence, occurring periodically and with consistent regularity so as to produce substantial financial loss to the employer will support the conclusion that the claimant is guilty of job misconduct (in this case, seven incidents of breakage by a trucker in seven weeks). *Hildebrand v. IDJS*, (Unpublished, Affirmed by Operation of Law on 3/3 Split, Iowa App. 1988). The employer has met its burden. 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 June 28, 2011, 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 Section for investigation and determination of the overpayment issue.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/css