

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KYLE L JELLISON

Claimant

APPEAL NO. 11A-UI-11483-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

JOINER CONSTRUCTION CO INC

Employer

OC: 07/24/11

Claimant: Respondent (2-R)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The employer, Joiner Construction Company, Inc. (Joiner), filed an appeal from a decision dated August 29, 2011, reference 01. The decision allowed benefits to the claimant, Kyle Jellison. After due notice was issued a hearing was held by telephone conference call on September 26, 2011. The claimant did not provide a telephone number where he could be contacted and did not participate. The employer participated by President Rod Joiner.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Kyle Jellison was employed by Joiner Construction from May 2 until July 31, 2011 as a full-time laborer/driver. On or about May 30, 2011, Mr. Jellison had an accident with the company pickup truck, running it off the road and into a tree. It caused around \$3,000.00 in damage. President Rod Joiner and Vice President Zeb Joiner warned the claimant if there were any more accidents he would be fired.

On July 23, 2011, Mr. Jellison had another accident. He was hauling a piece of rental equipment back to the rental company and had not measured the height of the load. He damaged the rental equipment when he went under a bridge which was too low for the height of the load. The employer was assessed \$2,506.06 for damage to the rental equipment.

On July 24, 2011, the claimant asked for a week off in order to deal with some personal family problems. The employer told him it would be reviewing his record while he was gone to determine whether he still had a job. After receiving information about the amount of damage to the rental equipment and evaluating the prior accident the decision was made to discharge the claimant.

Kyle Jellison has received unemployment benefits since filing a claim with an effective date of July 24, 2011.

REASONING AND CONCLUSIONS OF LAW:

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 claimant had been advised his job was in jeopardy as a result of his poor driving. In spite of the warning the claimant did not take the precaution to measure the height of the load he was hauling on July 23, 2011, and damaged the equipment he was to be returning to the rental company. The employer has the right to expect reasonable and prudent precautions to be made by its employees in the performance of their regular job duties. The claimant was negligent and this is a violation of the duties and responsibilities the employer has the right to expect of an employee. It is conduct not in the best interests of the employer and the claimant is disqualified.

Iowa Code § 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from

any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The claimant has received unemployment benefits to which he is not entitled. The question of whether the claimant must repay these benefits is remanded to the UIS division.

DECISION:

The representative's decision of August 29, 2011, reference 01, is reversed. Kyle Jellison is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount, provided he is otherwise eligible. The issue of whether the claimant must repay the unemployment benefits is remanded to UIS division for determination.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/pjs