

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RONALD G KUBESH
Claimant

APPEAL NO. 10A-UI-10299-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BAUER BUILT INC
Employer

OC: 06/13/10
Claimant: Respondent (2-R)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The employer, Bauer Built, filed an appeal from a decision dated July 12, 2010, reference 01. The decision allowed benefits to the claimant, Ronald Kubesh. After due notice was issued a hearing was held by telephone conference call on September 7, 2010. The claimant participated on his own behalf. The employer participated by Regional Vice President David Coufal. Exhibit A was admitted into the record.

ISSUE:

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

FINDINGS OF FACT:

Ronald Kubesh was employed by Bauer Built from March 5, 2007 until May 24, 2010 as a full-time store manager in Mason City, Iowa. On April 27, 2010, Regional Vice President David Coufal, gave the claimant his annual performance evaluation and a 90-day probation period. There had been a loss of profitability in his store substantially less than the loss in other stores throughout the region. In addition, he was not doing the monthly store inspections and safety meetings. He was also not doing the payroll budgets as required. He was advised there would be further disciplinary action up to and including discharge.

After the probation was put in effect the employer received two customer complaints. Mr. Kubesh had promised that special ordered tires would arrive on a certain date and they did not. He did not get back to them with any information when they called to ask the reason for the delay. The first complaint was investigated by Mr. Coufal and it was easily discovered the manufacturer had not processed the order.

The second complaint came the week of May 17, 2010, from a customer who sent a note along with his statement stub stating "Someone needs to wake up and fix or close the M.C. store. Service is bad, can't even get a return phone anymore." Mr. Coufal and Executive Vice President of Marketing Jim Fenn went to the claimant's store to discuss this with him. He was given the choice between quitting or being discharged and he elected to discharge.

Ronald Kubesh has received unemployment benefits since filing a claim with an effective date of June 13, 2010.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 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 work performance and customer service. He was discharged because of continued customer complaints after being placed on probation, and failure to conduct the required safety meetings and store inspections. Although the problem with the tires not being shipped on time may not have been directly his fault, he failed to make any effort to determine why the tires were late or to contact the customer and explain the results of his investigation.

The failure to satisfy customers seriously jeopardized the employer's business in Mason City, Iowa. The lack of safety meetings and store inspections violated known company rules. The claimant was not performing his job duties as required and causing loss of revenue to the employer. This is a violation of the duties and responsibilities the employer has the right to expect of an employee and conduct not in the best interests of the employer. The claimant is disqualified.

The claimant submitted a statement from his wife, typed and unsigned. The contents cannot be given much weight as Ms. Kubesh makes statements about conversations and meetings she did not attend. The main thrust of her statement is the detrimental effect of his work on the claimant's health. If he had quit because of health concerns this would be relevant, but he quit only when confronted with a choice of doing that or being discharged. The reason for his quit was not his health.

Iowa Code section 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 July 12, 2010, reference 01, is reversed. Ronald Kubesh 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