

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MIKE F JOHNSTON
Claimant

APPEAL NO. 10A-UI-03224-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

RUAN TRANSPORT CORP
Employer

OC: 01/24/10
Claimant: Appellant (2-R)

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

STATEMENT OF THE CASE:

The claimant, Mike Johnston, filed an appeal from a decision dated February 24, 2010, reference 03. The decision disqualified him from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on April 13, 2010. The claimant participated on his own behalf and was represented by Mark Hedberg. The employer, Ruan Leasing (Ruan), participated by Workers Compensation Administrator Belinda Smith.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits and whether he is able and available for work.

FINDINGS OF FACT:

Mike Johnston was employed by Ruan from October 26, 2007 until January 5, 2010 as a full-time over-the-road truck driver. He was injured on the job October 13, 2009, and was on a 12-week medical leave until January 5, 2010. The employer sent him a letter on December 22, 2009, notifying him he would be discharged if he did not return to work on or before January 5, 2010.

The workers' compensation doctor did not release him to return to work until February 8, 2010. As of the end of the pay period which encompassed January 5, 2010, the claimant was discharged.

The claimant was released to return to work by the workers' compensation doctor on February 8, 2010, but his personal physician imposed restrictions on his activities beyond that date. Currently he may not sit or stand for long periods of time, may not lift more than 20 pounds, and can bend and stoop only occasionally. The claimant has driven a truck for 30 or more years and has a high school diploma. He can no longer drive a truck long distances or operate foot controls. His past work experience in addition to driving a truck has included operating a fork lift and some desk work as a dispatcher.

Mike Johnston filed a claim for unemployment benefits with an effective date of January 24, 2010. He had been receiving temporary total disability payments after that date. No workers' compensation benefits were reported by the claimant when he filed his weekly claim for unemployment benefits.

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.

In order to be disqualified from receiving unemployment benefits a claimant must be discharged for substantial, job-related misconduct. In the present case the claimant was off work due to a work-related injury and was not able to return to work by the deadline. This is not misconduct as the claimant had no control over the amount of time it would take him to recover from the injury and disqualification may not be imposed.

The next issue is whether the claimant is able and available for work.

Iowa Code section 96.4-3 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

Given the claimant's work history and current work restrictions, there is not a large variety of work he is able to do. But he does have some work experience answering phones and working as a dispatcher and is therefore able and available for work in the labor market generally.

The claimant may have received unemployment benefits to which he was not entitled as a result of his workers' compensation benefits.

DECISION:

The representative's decision of February 24, 2010, reference 03, is reversed. Mike Johnston is qualified for benefits, provided he is otherwise eligible.

The issue of whether any of the workers' compensation benefits should be deducted from the claimant's unemployment benefits is remanded to the UIS division for determination.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/pjs