IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

ROCKY LARSEN
Claimant

LARSON MANUFACTURING CO OF SD INC
Employer

APPEAL NO. 08A-UI-11075-BT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 10/26/08 R: 12
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Rocky Larsen (claimant) appealed an unemployment insurance decision dated November 19, 2008, reference 01, which held that he was not eligible for unemployment insurance benefits because he was discharged from Larson Manufacturing Company of South Dakota, Inc. (employer) for work-related misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on December 10, 2008. The claimant participated in the hearing. The employer participated through Brad Worrall, Janet Hebrink, and Brian Throne. Employer's Exhibits One through Six 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 employer discharged the claimant for work-related misconduct?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was employed as a full-time assembler from March 3, 1997 through July 30, 2008, when he was discharged for violation of the employer's drug and alcohol policy. The employer has a written drug policy that informs employees of the drug testing procedures and the consequences for refusing to take a drug test. The claimant signed an acknowledgement of these policies and attended a presentation of the employer's respectful workplace information. The presentation covered the employer's drug- and alcohol-free workplace policy. Employees who refuse to take a drug test are in violation of the employer's drug and alcohol policy and are subject to immediate termination.

The employer received notification on July 22, 2008 from the Albert Lea Medical Center that the claimant was seeking treatment for an alleged work-related injury. The medical center wanted authorization for treatment but it was initially denied, as the employer had no information regarding a work-related injury. The claimant contacted the employer and was told if it was a work-related injury, he would be sent to Mason City to obtain treatment. He declined going to Mason City and said he had an appointment with his own doctor on July 24, 2008. The claimant spoke with the employer on July 25, 2008 and stated his doctor took him off work for six to eight weeks. He was advised again that if it was work-related, it had to be treated as such. The claimant stated that he wanted to run it

through his own insurance and would later go to the employer's doctor. He was advised the decision as to whether it was work-related or not would have to be determined immediately.

The claimant confirmed that it was a work-related injury, so the employer set up an appointment for him in Mason City on July 29, 2008, which would include a drug and alcohol test. The claimant agreed to the appointment, but when he learned that he had to take a drug and alcohol test, he became angry. He stated he was not going to take a drug test and would treat the injury under his own insurance. He was advised that his refusal to take the drug test and the switching of the injury from work-related to non-work-related had to be addressed. The claimant was subsequently called by the human resources manager and advised he needed to attend the appointment to determine whether his injury was work-related. The claimant said he cannot travel and denied that it was work-related. He said he had an appointment with his own physician and the human resources manager advised him that he needed to have a drug screen set up at his physician's office for his July 30, 2008 appointment. The claimant refused and stated that he would not take the drug screen as a matter of principal. He then offered his two weeks' notice because the company has chosen to accuse him of something and he said he will not submit to any testing at all. He added that he was going to stick to his principals. The employer subsequently discharged the claimant for violation of the employer's drug and alcohol policy.

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 for his refusal to take a drug test. The Iowa Supreme Court has ruled that an employer cannot establish disqualifying misconduct based on a drug test performed in violation of Iowa's drug testing laws. Harrison v. Employment Appeal Board, 659 N.W.2d 581 (Iowa 2003); Eaton v. Employment Appeal Board, 602 N.W.2d 553, 558 (Iowa 1999). As the court in Eaton stated, "It would be contrary to the spirit of chapter 730 to allow an employer to benefit from an unauthorized drug test by relying on it as a basis to disqualify an employee from unemployment compensation benefits." Eaton, 602 N.W.2d at 558.

Under Iowa Code § 730.5-9-a, the employer's written drug policy is required to provide uniform requirements for what disciplinary action can be taken upon receipt of "a confirmed positive test result for drugs or alcohol or upon the refusal of the employee or prospective employee to provide a testing sample." Iowa Code § 730.5-9-a states that an employer can taken disciplinary action including termination of employment, upon receipt of "a confirmed positive test result for drugs or alcohol ...or upon the refusal of an employee or prospective employee to provide a testing sample."

The claimant was aware his employment would be terminated if he refused to take the drug test but continued to refuse. His refusal to submit to a drug test in accordance with the employer's drug policy amounts to an intentional and substantial disregard of the employers' interests. The claimant's termination was in compliance with chapter 730.5. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

DECISION:

The unemployment insurance decision dated November 19, 2008, reference 01, is affirmed. 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.

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Susan D. Ackerman
Administrative Law Judge

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Decision Dated and Mailed

sda/kjw