

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**GREG A KLAUER**  
Claimant

**APPEAL NO. 11A-UI-10611-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CAPTIVE PLASTICS INC**  
Employer

**OC: 07/10/11**  
**Claimant: Respondent (2-R)**

Section 96.5-2-a – Discharge  
Section 96.3-7 – Benefit Overpayment

**STATEMENT OF THE CASE:**

Captive Plastics, Inc. filed a timely appeal from a representative's decision dated August 3, 2011, reference 01, which found claimant eligible to receive unemployment insurance benefits. After due notice, a telephone hearing was held on September 6, 2011. Claimant participated personally. The employer participated by Ms. Julie Ryan, Human Resource Manager, and Craig Hashagen, Production Supervisor. Employer's Exhibit One through Eight were received into evidence.

**ISSUE:**

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

**FINDINGS OF FACT:**

Having considered all of the evidence in the record, the administrative law judge finds: Greg Klauer was employed by Captive Plastics, Inc. from August 15, 2010 until July 13, 2011 when he was discharged from employment. Mr. Klauer was employed as a full-time utility operator and was paid by the hour. His immediate supervisor was Mike Fohl.

Mr. Klauer was discharged on July 13, 2011 for an incident that had taken place on June 23, 2011. On that date the claimant had been injured at work. Subsequently, it was reported by company employees that the claimant and other workers had engaged in "office chair racing" that night and that activity had caused Mr. Klauer to be injured. The company further investigated and determined that Mr. Klauer and two other workers had made "Face book entries" within 27 minutes of the end of their shift the following morning making reference to the chair racing activities at work. (See Exhibit 8).

Based upon the investigation, which included at least one firsthand witness identifying Mr. Klauer as being a participant in the horseplay, a decision was made to terminate Mr. Klauer from employment. The employer reasonably considered the activity to be a serious violation of

its horseplay and safety policies and believed Mr. Klauer's initial denials about his participation in the incident to be a factor in the decision to terminate the claimant from employment. At the time of discharge Mr. Klauer made admissions about his involvement in the incident and identified one additional worker who had been involved on the night in question.

### **REASONING AND CONCLUSIONS OF LAW:**

The question before the administrative law judge is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits. It does.

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 of proof in this matter. See Iowa Code § 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment insurance benefits. Misconduct that may be serious enough to warrant the discharge of an employee may not necessarily be serious enough to warrant the denial of unemployment insurance benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. of Appeals 1992).

The claimant was discharged when the employer reasonably concluded that he had engaged in unsafe horseplay on the night of June 23, 2011 and that the claimant had provided a false

statement to the company about his involvement. The evidence in the record establishes the claimant had been injured on the job on the night of June 23, 2011 and had sought medical assistance from the company that night. The evidence also establishes that within 27 minutes after the end of the work shift the following morning Mr. Klauer and two other individuals had engaged in Face book communications about the horseplay that they had engaged in at work the previous night. Mr. Klauer was aware that horseplay was a violation of company policy and that serious horseplay could result in immediate termination from employment. Although the claimant initially denied his involvement, he subsequently made admissions at the time of discharge that he was involved and made inquiries as to why another employee who was involved was not being discharged. The administrative law judge thus concludes that the evidence in the record establishes that the claimant engaged in willful violation of company policy that resulted in his discharge from employment.

Mr. Klauer's conduct showed a willful disregard of the employer's interests and reasonable standards of behavior that the employer has right to expect of its employees under the provision of the Employment Security Law. Unemployment insurance benefits are withheld.

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.

**DECISION:**

The representative's decision dated August 3, 2011, reference 01, is reversed. Claimant is disqualified. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount and meets all other eligibility requirements of Iowa law. The issue of whether the claimant has been overpaid unemployment insurance benefits is remanded to the UIS Division for determination.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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