

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RONALD J LEE
Claimant

APPEAL NO. 11A-UI-14567-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ACTION WAREHOUSE CO LTD
Employer

OC: 10/16/11
Claimant: Respondent (2-R)

Section 96.5(1) – Quit
Section 96.5(2) – Discharge

STATEMENT OF THE CASE:

The employer, Action Warehouse, filed an appeal from a decision dated November 4, 2011, reference 01. The decision allowed benefits to the claimant, Ronald Lee. After due notice was issued a hearing was held by telephone conference call on December 8, 2011. The claimant participated on his own behalf. The employer participated by President David Hooper.

ISSUE:

The issue is whether the claimant quit work with good cause attributable to the employer or whether he was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Ronald Lee was employed by Action Warehouse from April 25 until October 2, 2011 as a part-time truck driver. He took his Department of Transportation (DOT) physical on October 2, 2011, and notified the doctor he had sleep apnea. When asked if he was taking treatment for this condition he acknowledged he was not.

Mr. Lee had sought treatment in 2009 with the CPAP mask but was uncomfortable with it and refused the treatment. He did not seek any alternative treatment for the next two years and only recently, after the separation from employment, contacted a doctor for an appointment on this matter.

When the claimant notified the employer he did not pass the DOT physical he and Operations Manager Billy Burr knew he could not continue working as a truck driver without the medical card and his employment was at an end.

Ronald Lee has received unemployment benefits since filing a claim with an effective date of October 16, 2011.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5-1 provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

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 did not quit so much as acknowledge he could not continue working without the required DOT medical certification. The employer did not have any further work for him as a result. While Mr. Lee's medical condition is certainly not voluntary, his refusal of treatment is. He is obliged to take whatever reasonable treatment is available to maintain his eligibility to drive truck for the employer. If the treatment did not work there would be no misconduct, but refusal of treatment altogether is conduct not in the best interests of the employer. The claimant is disqualified.

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 November 4, 2011, reference 01, is reversed. Ronald Lee is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount in insured work, 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/css