

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RICKY A MILKS

Claimant

APPEAL NO. 12A-UI-04170-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CRESCENT ELECTRIC SUPPLY COMPANY

Employer

OC: 03/04/12

Claimant: Respondent (2-R)

Section 96.5-2-a – Discharge
Section 96.3-7 – Overpayment of Benefits

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated April 4, 2012, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on May 7, 2012. The parties were properly notified about the hearing. The claimant participated in the hearing. Kevin Neisen participated in the hearing on behalf of the employer.

ISSUES:

Was the claimant discharged for work-connected misconduct?
Was the claimant overpaid unemployment insurance benefits?

FINDINGS OF FACT:

The claimant worked full time for the employer from September 16, 1993, to March 5, 2012. Kevin Neisen, the branch manager, was the claimant's supervisor.

In January 2012, Neisen informed the claimant that he was expected to attend the employer's national sales conference in St. Charles, Illinois from March 5 through 8, 2012. The employer would have paid all expenses for the conference. The conferences are held every two years, and the claimant had attended conferences in 2008 and 2010. The claimant told Neisen that he wasn't sure he would go to the conference. Neisen told him the conference was mandatory.

On the afternoon of March 2, Neisen talked to the claimant again about the conference. The claimant informed Neisen that he wasn't going to attend the conference. Neisen again told the claimant it was mandatory and he could be terminated if he did not attend. The claimant mentioned that he was having family problems at home, but he did not provide any details.

The claimant did not want to go to the conference because he did not feel comfortable leaving his 15-year-old daughter alone for that long. She had recently gotten into trouble for under aged drinking of alcohol and there were problems at school as well. He did not tell Neisen this.

When they talked about the conference again on March 3, the claimant told Neisen that he would let him know the next day. On the morning of March 4, which was the day that the claimant would have left on the trip, he sent a text message to Neisen that he "couldn't do it." He also remarked that he did not get anything out the conference and hated it.

When the claimant reported to work on March 5, 2012, Neisen discharged him for refusing to attend the sales conference, which was considered insubordination.

The claimant filed for and received a total of \$3,480.00 in unemployment insurance benefits for the weeks between March 4 and May 5, 2012.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

The claimant willfully violated a direct order from his supervisor, which was accompanied by a warning that he could face termination if he did not attend the conference. If his daughter's situation was that dire, he should have shared his concerns with his supervisor or figured out a way for his daughter to have adult supervisor while he was on this business trip. It's a very unfortunate way for someone to lose a job after almost 20 years. But there is no way, under the facts of this case, to conclude it was anything other than disqualifying misconduct under the law.

The unemployment insurance law requires benefits to be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. But the overpayment will not be recovered when an initial determination to award benefits is reversed on appeal on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code § 96.3-7. In this case, the claimant has received benefits but was ineligible for those benefits. The matter of deciding the amount of the overpayment and whether the overpayment should be recovered under Iowa Code § 96.3-7-b is remanded to the Agency.

DECISION:

The unemployment insurance decision dated April 4, 2012, reference 01, is reversed. The claimant is disqualified from receiving unemployment insurance benefits until he has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The matter of deciding the amount of the overpayment and whether the overpayment should be recovered under Iowa Code § 96.3-7-b is remanded to the Agency.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs