

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RONALD L CASE

Claimant

APPEAL NO. 08A-UI-09539-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SCHNEIDER NATIONAL CARRIERS INC

Employer

OC: 09/07/08 R: 04

Claimant: Respondent (2-R)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The employer, Schneider National Carriers, Inc. (Schneider), filed an appeal from a decision dated October 1, 2008, reference 01. The decision allowed benefits to the claimant, Ronald Case. After due notice was issued a hearing was held by telephone conference call on November 3, 2008. The claimant did not provide a telephone number where he could be contacted and did not participate. The employer participated by Driver Business Leader Ted Bentley and was represented by ADP in the person of Caroline Semer. Exhibit One was admitted into the record.

ISSUE:

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

FINDINGS OF FACT:

Ronald Case was employed by Schneider from November 2, 2007 until September 10, 2008 as a full-time over-the-road truck driver. At the time he was hired he received a copy of the employer's policies which includes a "core value" of respect for all. He had been verbally counseled about his tendency to be rude and interrupting while supervisors were trying to discuss work matters with him.

On September 10, 2008, Mr. Case called Operations Manager Tony Howard to complain about Driver Business Leader Ted Bentley allegedly threatening him two months prior. Mr. Howard said he would look into the allegations and get back to him. Immediately after talking with Mr. Howard the claimant called division Manager Patrick McKay with the same complaint and then Human Resources Director Wayne Lubner, where he left a voice mail message. The message contained vulgar language, Mr. Case saying at least five different times to "fuck this" and once that he was "tired of this shit."

Later he called Mr. Lubner back and, as he was still not in his office, spoke with secretary Joan. She told him Mr. Howard would make a decision on his complaint but Mr. Case stated it was not up to Mr. Howard but to Schneider. He was belligerent and abusive and Joan hung up on him.

He called back again and the same thing occurred. Joan contacted Mr. Bentley who contacted Mr. Howard. The decision was made to discharge the claimant for verbal abuse to Joan and Mr. Lubner. He was notified by phone by Mr. Bentley.

Ronald Case has received unemployment benefits since filing a claim with an effective date of September 7, 2008.

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.

The claimant was discharged for using vulgar language to the human resources manager on the voice mail and harassment of the secretary by being verbally abusive and belligerent. He had been warned about his rudeness in the past and knew the company's policy about a respectful workplace. This was more than just angry words but belligerence, vulgarity, and a refusal to accept that his complaint would be looked into rather than resolved immediately in his favor. This is a violation of the duties and responsibilities the employer has the right to expect of an employee and 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 states 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 October 1, 2008, reference 01, is reversed. Ronald Case is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount, 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