

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

STEPHEN W MORITZ
Claimant

APPEAL NO. 11O-UI-11247-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**“W M KRYGER CO
“AUTO GLASS SERVICE**
Employer

**OC: 04/17/11
Claimant: Respondent (2)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Kryger Glass filed a timely appeal from an unemployment insurance decision dated May 9, 2011, reference 01, that allowed benefits to Stephen W. Moritz. Due notice was issued for a telephone hearing to be held June 15, 2011. The employer did not receive the notice. Based on the employer's failure to respond to the notice, the administrative law judge decision 11A-UI-06633-NT was issued on June 17, 2011, allowing benefits to Mr. Moritz. The employer then filed an appeal with the Employment Appeal Board which, in an order dated August 24, 2011 remanded the case for further proceedings. After due notice was issued, a telephone hearing was held December 20, 2011 with Mr. Moritz participating. Regional Manager Steven Smith and Human Resources Manager Amy Rohaus participated for the employer. Employer Exhibit One was admitted into evidence.

ISSUE:

Was the claimant discharged for misconduct in connection with the employment?

FINDINGS OF FACT:

Stephen W. Moritz was employed by Kryger Glass from July 14, 2003 until he was discharged April 19, 2011. In July 2010, Mr. Moritz was promoted from warehouse manager to wholesale sales and operations manager for the Davenport area. Mr. Moritz failed to take part in a weekly conference call on April 18, 2011. Mr. Moritz forgot about the meeting. He kept his calendar on his company Blackberry, but he had neglected to charge the Blackberry over the previous weekend.

Regional Manager Steven Smith had suspended Mr. Moritz for three days in late February 2011 for failing to report to work and failing to participate in an earlier conference call. At Mr. Smith's direction, Mr. Moritz had created an action plan to avoid similar problems. His action plan included submitting his weekly schedules on the prior Friday. Mr. Moritz had failed to submit his schedule on the two Fridays prior to April 18, 2011.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence establishes that the claimant was discharged for misconduct in connection with the employment. 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 evidence establishes that Mr. Moritz was failing to follow through with the action plan he had prepared following his earlier suspension. Whether this was deliberate or careless, he failed to follow through with specific tasks designed to improve his performance. Benefits are withheld.

DECISION:

The unemployment insurance decision dated May 9, 2011, reference 01, is reversed. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs