

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KEVIN LUZE
Claimant

APPEAL NO. 09A-UI-05575-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

FASTENAL COMPANY INC
Employer

**Original Claim: 03/01/09
Claimant: Respondent (2/R)**

Iowa Code § 96.5(2)(a) - Discharge for Misconduct
Iowa Code § 96.3-7 - Overpayment

STATEMENT OF THE CASE:

Fastenal Company, Inc. (employer) appealed an unemployment insurance decision dated March 24, 2009, reference 01, which held that Kevin Luze (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 6, 2009. The claimant participated in the hearing. The employer participated through Jeff Peplinski, Transportation Manager. Employer's Exhibits One and Two were admitted into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

The issue is whether the employer discharged the claimant for work-related misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was employed as a full-time delivery driver from March 2, 2008 through March 2, 2009, when he was discharged. The employer was unaware of any problems the claimant was having until he took a week of vacation during the week ending February 27, 2009. While he was gone, the relief driver was able to arrive at the first store between 3:45 a.m. and 4:30 a.m. and he was able to arrive at the last store between 9:15 a.m. and 9:45 a.m. The claimant was not making those same times when he was driving and there was no reason for him not to do so. The relief driver also documented some maintenance problems with the claimant's work truck. The truck was seven quarts low on oil, there was a baseball-sized crack in the windshield, the back bumper was bent, and the back door was bowed out from something running into it.

When the claimant returned from vacation, the employer planned on discussing the issues with him, although the claimant's job was not in jeopardy. The employer prepared a written disciplinary action sheet addressing the maintenance issues, but the claimant refused to sign it. The employer also prepared a verbal discussion/documentation paper that addressed the differences in delivery times. The document merely stated that the claimant needs to maintain these same times of the relief

driver, since he drives the route every day. It was not a disciplinary warning, but the claimant refused to sign this document also.

The employer said the claimant told him he could not meet those driving times and the employer told him he could no longer employ him if he was unable to meet the expectations of the delivery times. The claimant again stated he could not meet those driving times and the employer had to discharge him. The claimant denies he said he could not meet the driving times but did admit he refused to sign both documents.

The claimant filed a claim for unemployment insurance benefits effective March 1, 2009 and has received benefits after the separation from employment.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a.

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 to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The claimant was discharged after he told the employer he could not meet the delivery-time expectations. He denies that he said he could not meet the delivery-time expectations but does admit he refused to sign the document stating the same. His refusal to acknowledge the employer's written expectations amounts to a refusal to meet those standards.

Willful misconduct can be established where an employee manifests an intent to disobey a future reasonable instruction of her employer. Myers v. IDJS, 373 N.W.2d 507 (Iowa 1983).

However, the claimant contends he was discharged because he refused to sign the disciplinary action sheet. Even if the claimant disagreed with its contents, he could have signed it and written that he disagrees with it. The failure to acknowledge the receipt of a written reprimand by signing it constitutes job misconduct as a matter of law. Green v. IDJS, 299 N.W.2d 651 (Iowa 1980). The employer has met its burden. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

Iowa Code § 96.3(7) provides that benefits must 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. The overpayment recovery law was updated in 2008. See Iowa Code § 96.3(7)(b). Under the revised law, a claimant will not be required to repay an overpayment of benefits if all of the following factors are met. First, the prior award of benefits must have been made in connection with a decision regarding the claimant's separation from a particular employment. Second, the claimant must not have engaged in fraud or willful misrepresentation to obtain the benefits or in connection with the Agency's initial decision to award benefits. Third, the employer must not have participated at the initial fact-finding proceeding that resulted in the initial decision to award benefits. If Workforce Development determines there has been an overpayment of benefits, the employer will not be charged for the benefits, regardless of whether the claimant is required to repay the benefits.

Because the claimant has been deemed ineligible for benefits, any benefits the claimant has received could constitute an overpayment. Accordingly, the administrative law judge will remand the matter to the Claims Division for determination of whether there has been an overpayment, the amount of the overpayment, and whether the claimant will have to repay the benefits.

DECISION:

The unemployment insurance decision dated March 24, 2009, reference 01, is reversed. The claimant is not eligible to receive unemployment insurance benefits, because he was discharged from work for misconduct. Benefits are withheld until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The matter is remanded to the Claims Section for investigation and determination of the overpayment issue.

Susan D Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/kjw