

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

JEFFREY S DOLE
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COUNTYLINE ENGINEERING INC
824 BROOKS RD
IOWA FALLS IA 50126

Appeal Number: 06A-UI-05295-DWT
OC: 04/23/06 R: 02
Claimant: Respondent (2)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Countyline Engineering, Inc. (employer) appealed a representative's May 12, 2006 decision (reference 01) that concluded Jeffrey S. Dole (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 9, 2006. The claimant failed to respond to the hearing notice by contacting the Appeals Section prior to the hearing and providing the phone number at which he could be contacted to participate in the hearing. As a result, no one represented the claimant. Jean Thompson, the general manager, appeared on the employer's behalf. Based on the evidence, the arguments of the employer, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on March 24, 2005. The claimant worked as a full-time welder. Artie Allen was the claimant's supervisor.

During his employment, the claimant had attendance problems. On April 10 and 11, the claimant did not report to work or notify the employer he was unable to work as scheduled. The employer planned to discharge the claimant because of his repeated attendance problems. The claimant talked to the employer and asked the employer to reconsider discharging him because he was trying to break up with his girlfriend and he needed the money to find his own place to live. The employer gave the claimant one more chance and allowed the claimant to continue his employment.

On April 25, the claimant and another employee, S.B. who had the authority to assign the claimant work, became engaged in a heated confrontation. The employer broke up the confrontation and believed the issues between the two men were resolved. On April 26, when S.B. drove a forklift into a building where the claimant was working, the claimant swore at S.B. and told him to turn off the forklift. Allen concluded the claimant again tried to create a confrontational situation between himself and S.B. The employer discharged the claimant on April 26 because the claimant again tried to create a confrontational situation between himself and S.B.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The claimant knew or should have known his job was in jeopardy when the employer gave him one more chance to continue his employment on April 12 after the claimant had repeated attendance issues. After April 12 the claimant did not have any further attendance issues, but he then created confrontational situations between himself and another employee. On April 25, the employer stopped a heated argument between the claimant and another employee. The employer believed problems between the two were resolved on April 25. On April 26, the claimant again tried to start a confrontation with this same employee by swearing and yelling at the employee. The claimant's conduct on April 26 after the employer had just talked to him on April 25 about the same problem amounts to an intentional and substantial disregard of the standard of behavior the employer has a right to expect from an employee. As of April 23, 2006, the claimant is not qualified to receive unemployment insurance benefits.

The claimant has not been overpaid any benefits because he has not received any since he established his claim.

DECISION:

The representative's May 12, 2006 decision (reference 01) is reversed. The employer discharged the claimant for reasons that constitute work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of April 23, 2006. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged for benefits that may be paid to the claimant.

dlw/cs