

**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**

**BRETT D GOKEN
3307 MERRITT RD
MARSHALLTOWN IA 50158**

**LENNOX MFG INC
PO BOX 250
MARSHALLTOWN IA 50158**

**Appeal Number: 04A-UI-09653-HT
OC: 11/23/03 R: 02
Claimant: Appellant (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:

The claimant, Brett Goken, filed an appeal from a decision dated August 31, 2004, reference 04. The decision disqualified him from receiving unemployment benefits. After due notice was issued a hearing was held by telephone conference call on September 29, 2004. The claimant participated on his own behalf. The employer, Lennox, did not provide a telephone number where a representative could be contacted and did not participate.

FINDINGS OF FACT:

Having heard the testimony of the witness and having examined all of the evidence in the record, the administrative law judge finds: Brett Goken was employed by Lennox from

November 7, 1994 until July 28, 2004. He was a full-time press operator. In August 2003, he entered into a last change agreement with the employer wherein he agreed he would not violate any of the policies and procedures of Lennox or the collective bargaining agreement. If he did, he acknowledged he would be discharged. He was represented by a union representative at the time the agreement was signed.

On July 28, 2004, Mr. Goken was notified he was "indefinitely suspended" because he had allegedly threatened another employee. The claimant had reported this other employee on July 21 and July 23, 2004, for threatening his job. In addition, the other employee was being verbally abusive to him on July 16, 2004, at which time Mr. Goken told him that if he wanted to yell at him to do it outside the workplace because he did not want to jeopardize his job with any incidents.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes he is not.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof to establish the claimant was discharged for substantial, job-related misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). In the present case, Lennox has presented no evidence or testimony to establish the reason or reasons the claimant was indefinitely suspended. It has, therefore, not met its burden of proof and disqualification may not be imposed.

DECISION:

The representative's decision of August 31, 2004, reference 04, is reversed. Brett Goken is qualified for benefits, provided he is otherwise eligible.

bgh/pjs