

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

TRAVIS J O'CONNOR  
906 SYCAMORE ST  
MUSCATINE IA 52761

FIVE-J INC  
FABRICATORS-PLUS  
PO BOX 47  
MUSCATINE IA 52761

Appeal Number: 04A-UI-09345-HT  
OC: 07/25/04 R: 04  
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, 4<sup>th</sup> 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-2-a – Discharge  
Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

The employer, Five-J, Inc., filed an appeal from a decision dated August 19, 2004, reference 01. The decision allowed benefits to the claimant, Travis O'Connor. After due notice was issued a hearing was held by telephone conference call on September 22, 2004. The claimant participated on his own behalf. The employer participated by Human Resources Manager Sara Kellet and Operations Manager Bobby Holiday.

#### FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Travis O'Connor was employed by Five-J, Inc., from January 29 until July 29, 2004. He was a full-time production worker. Mr. O'Connor had received his evaluation a few days before his separation. During the meeting with Operations Manager Bobby Holiday, Mr. O'Connor said he had not been doing any work that day because his supervisor, Jason, was doing his job operating the saw due to the supervisor's arm hurting him. After the review, Mr. O'Connor told Jason what he had said and the supervisor went into the office to talk with Ms. Holiday and President Doug Buster. He was upset because he had said nothing of the sort to the claimant, but had taken over the saw operation because Mr. O'Connor did not seem to be focused that day and he did not feel the claimant should be operating the saw. The employer planned to give the claimant a three-day suspension for this.

Before the suspension could be issued to the claimant, Mr. Buster held a staff meeting on July 29, 2004, because some of the first shift workers were not happy with their evaluations and raises. At the meeting, the claimant was disruptive and the president asked him if he had anything to say. Mr. O'Connor then began to rail about being "lied to" about the incentive program, but it had been instituted only a few months before and then immediately abandoned because it was not workable. The claimant still felt he should receive some part of the incentive.

Mr. Buster asked the claimant if he knew of other places which paid better and he said he did. The employer then inquired why he did not apply for work there and Mr. O'Connor acknowledged he did not because he would not be able to "pass the piss test." He meant the drug screening test. Mr. Buster said that was not his personal responsibility and suggested the claimant leave. Mr. O'Connor said he would leave "when [he] felt like it," at which point Mr. Buster made it clear he should leave immediately. Mr. O'Connor kicked a chair across the room as he left.

At the appeal hearing the claimant indicated he had been smoking marijuana while employed at Five-J, Inc.

Travis O'Connor has received unemployment benefits since filing a claim with an effective date of July 25, 2004.

#### REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes he is.

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).

An employer has the right to expect employees to be honest in their dealings and to conduct themselves in an appropriate manner. Mr. O'Connor had misrepresented the facts to the employer when he received his evaluation, regarding why he was been working that morning. He had not yet received disciplinary action for this when he was disruptive and rude in the staff meeting which had been called to discuss employee concerns. Expressing one's concerns does not infer the right to call anyone else a liar or to throw furniture around. In addition, the claimant indirectly admitted to consuming controlled substances by stating he would not be able to work anyplace else because he would not be able to pass the drug screening test. Given this admission, his disruptive conduct and his misrepresentation of facts regarding the reason his supervisor was doing his work for him, the administrative law judge must conclude the claimant was guilty of conduct not in the best interests of the employer and he is disqualified.

DECISION:

The representative's decision of August 19, 2004, reference 01, is reversed. Travis O'Connor is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount provided he is otherwise eligible. He is overpaid in the amount of \$1,134.00.

bgh/kjf