

**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**

**WILLIAM G ROUSE  
2159 FOYE  
DUBUQUE IA 52001**

**EAGLE WINDOW AND DOOR INC  
ATTN AMY TURNER  
PO BOX 1072  
DUBUQUE IA 52004**

**Appeal Number: 05A-UI-01336-HT  
OC: 01/02/05 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, Eagle Window and Door, Inc. (Eagle), filed an appeal from a decision dated January 26, 2005, reference 01. The decision allowed benefits to the claimant, William Rouse. After due notice was issued a hearing was held by telephone conference call on February 23, 2005. The claimant participated on his own behalf. The employer participated by Traffic Manager Bill Lynch.

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: William Rouse was employed by Eagle from September 15, 2003 until December 17, 2004. He was a full-time second-shift production worker. At the time of hire, the claimant received a copy of the employee handbook. The work rules strictly prohibit harassment or "fighting, threatening, intimidating or interfering" with another employee. The disciplinary consequences for violation of the work rules is discharge.

In the summer of 2004, Traffic Manager Bill Lynch received a call from the plant because the claimant had become involved in a verbal confrontation with a supervisor. Mr. Lynch talked to Mr. Rouse and offered to come to the plant and resolve the matter between the two of them, and the claimant declined.

On December 15, 2004, the claimant was involved in a physical action with another employee, Andy. This occurred in the break room when Andy was "bothering" the claimant by nudging his leg, asking him why he was being treated so poorly, and finally grabbed his head and rubbed it. Mr. Rouse had asked Andy more than once to stop what he was doing but he did not. Finally, the claimant grabbed Andy by the collar of his shirt and forced him down into a chair.

The incident was reported to Mr. Lynch the next day and he investigated by reading statement from four witnesses, and interviewing the witnesses directly. He also interviewed Andy and Mr. Rouse. All the accounts were in agreement regarding the major issues. Both Mr. Rouse and Andy were discharged for violation of the company work rules.

William Rouse has received unemployment benefits since filing a claim with an effective date of January 2, 2005.

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).

The claimant was aware of the work rules which prohibited "fighting" or "interfering" with other employees. While grabbing the other worker's collar would not necessarily be fighting, it would certainly constitute "interfering" with him. The fact the employer takes these rules very seriously and literally is evidence by the fact Andy was also discharged for his conduct in interfering with Mr. Rouse.

It is certain that Andy's conduct was annoying and provocative, but that does not give the claimant any license to lay hands on him. The claimant's best course of action would have been to contact a supervisor, or Mr. Lynch, to help resolve the matter. The claimant knew Mr. Lynch would be willing to come to the plant to deal with the matter as he had offered to do so in the past.

The claimant deliberately violated the employer's work rules dealing with the safety of all employees. This is conduct not in the best interests of the employer and the claimant is disqualified.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The claimant has received unemployment benefits to which he is not entitled. These must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's decision of January 26, 2005, reference 01, is reversed. William Rouse 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 \$2,135.00.

bgh/sc