

**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**

**FRANCIS R BREWER
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WEBSTER CITY IA 50595**

**WEBSTER CITY COMMUNITY SCHOOL
DISTRICT
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**Appeal Number: 04A-UI-06210-RT
OC: 05-09-04 R: 01
Claimant: Appellant (1)**

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 for Misconduct

STATEMENT OF THE CASE:

The claimant, Francis R. Brewer, filed a timely appeal from an unemployment insurance decision dated May 24, 2004, reference 01, denying unemployment insurance benefits to him. After due notice was issued, a telephone hearing was held on June 28, 2004 with the claimant participating. Larry A. Hunt, high school Principal, and Riley Powell, Head Custodian at the high school, participated in the hearing for the employer, Webster City Community School District.

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: The claimant was employed by the employer as a full-time night custodian for the high school from August 19, 2003 until he was discharged on May 11, 2004. The claimant was discharged for failing to properly provide for the security of the building and a failure to follow instructions day to day in the operation of his duties and walking out of a meeting with his supervisor, Riley Powell, Head Custodian for the high school, on May 10, 2004. One of the claimant's responsibilities was to see that the office area doors were locked and the outside doors were locked. The claimant occasionally failed to ensure that such doors were locked despite at least two oral warnings by Larry A. Hunt, high school Principal, and at least one oral warning from Riley Powell, Head Custodian for the high school and one of the employer's witnesses, and a reprimand by Dave Orton, head of the building and grounds, on March 12, 2004. Despite these warnings, the claimant persisted on occasion in leaving certain doors unlocked. It was sometimes difficult for the claimant to ensure that all doors were locked because some individuals could gain entrance to the building late and perform certain activities such as playing basketball. Nevertheless, the claimant failed to always ensure that doors were locked. The claimant also failed to follow instructions day to day. The claimant would be given instructions for things to do following group meetings at the high school when the night custodian would be responsible for doing certain jobs such as mopping or taking down tables or sweeping and so forth. Although the day custodians tried to minimize the amount of work for the claimant, he would occasionally fail to do matters for which he was instructed. Finally, at a meeting with Mr. Powell on May 10, 2004 in which the claimant was being reprimanded for some matter, the claimant got up and walked out of the meeting before the meeting was over. Mr. Powell had had the same meeting with two others. The next day the claimant was discharged.

REASONING AND CONCLUSIONS OF LAW:

The question presented by this appeal is whether the claimant's separation from employment was a disqualifying event. It was.

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 administrative law judge concludes that the claimant was discharged on May 11, 2004. In order to be disqualified to receive unemployment insurance benefits pursuant to a discharge, the claimant must have been discharged for disqualifying misconduct. Although it is a close question, the administrative law judge concludes that the claimant was discharged for disqualifying misconduct. The employer's witnesses credibly testified that despite warnings to the claimant to secure the building and verify that outside doors were locked and that the doors in the office area were locked, the claimant persisted in failing to always check to see if such doors were locked. It was the claimant's responsibility to see to the locking of these doors. The claimant got warnings from different individuals about this same matter but persisted in failing to always secure the building. The claimant also failed to complete tasks to which he was assigned especially for group meetings. The claimant testified that he was busy and could not always get to all the matters assigned. Finally, the claimant deliberately left a meeting with Mr. Powell after being reprimanded for some of these matters and the claimant was then discharged. The administrative law judge concludes that there is not a preponderance of the evidence that his failure to always ensure that the doors were locked and failing to do all the work as instructed was willful or deliberate. However, the administrative law judge is constrained to conclude that in view of the warnings and the claimant's repeated failures to secure the building, that these failures were carelessness or negligence in such a degree of recurrence as to establish disqualifying misconduct. The claimant testified that this was a difficult task because others could gain entrance into the building at night and that he had established a pattern that he did every night after learning that he needed to check the doors after everyone had left the building. Nevertheless, doors were still left unlocked and the administrative law judge must conclude that this was because of the negligence of the claimant who clearly had the duty to ensure that the doors were locked. Also, failing to follow instructions was negligent on the part of the claimant. Finally, the claimant deliberately walked out of a meeting with Mr. Powell. The administrative law judge does not believe that this alone would establish willful or deliberate misconduct but further indicates the claimant's negligence. Accordingly, and for all the reasons set out above, the administrative law judge concludes that the claimant's acts were carelessness or negligence in such a degree of recurrence as to establish disqualifying misconduct. Therefore, the administrative law judge concludes that the claimant was discharged for disqualifying misconduct, and, as a consequence, he is disqualified to receive unemployment insurance benefits. Unemployment insurance benefits are denied to the claimant until or unless he requalifies for such benefits.

DECISION:

The representative's decision of May 24, 2004, reference 01, is affirmed. The claimant, Francis R. Brewer, is not entitled to receive unemployment insurance benefits, until or unless he requalifies for such benefits, because he was discharged for disqualifying misconduct.

tjc/tjc