

**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**

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**INTERBAKE FOODS
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**RICHARD STURGEON
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**Appeal Number: 05O-UI-01977-H2T
OC: 03-21-04 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/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the October 27, 2004, reference 05, decision that denied benefits. After due notice was issued, a hearing was held on March 14, 2005. The claimant did participate through the interpretation of Rosemary Paramo Ricoy and with the assistance of Richard Sturgeon. The employer did participate through Carol Mackey, Line Manager (representative) John Kreber, Assistant Human Resources Manager and Rick Larson, Line Manager. Employer's Exhibit One was received.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a cleaner on line number five full time beginning May 11, 2004

through October 6, 2004 when he was discharged. On October 6, 2004 the claimant was told by line manager Carol Mackey to sweep up the cookies on the floor underneath line seven. He was told to do this on two separate occasions and refused each time. Sweeping up cookies was part of the claimant's regular job duties and he performed it regularly on line five that he was assigned to work. The claimant had time to sweep the cookies on line seven, he just chose not to because he believed some other employee should be assigned to do the job. The claimant was yelling at his supervisor, Carol Mackey, and was shaking his finger at her. Rick Larson was standing near Ms. Mackey and heard her instruct the claimant to sweep the floor and heard the claimant refuse to sweep the floor. The claimant refused to sweep the floor and was sent home and discharged for his refusal to perform a required job function.

The claimant had been given a copy of the employer's work rules, which provide that refusal to follow an order is insubordination, and is ground for immediate termination.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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 question of whether the refusal to perform a specific task constitutes misconduct must be determined by evaluating both the reasonableness of the employer's request in light of all circumstances and the employee's reason for noncompliance. Endicott v. IDJS, 367 N.W.2d 300 (Iowa App. 1985).

The claimant was told several times to sweep the floor by Ms. Mackey. Sweeping the floor is a job duty the claimant was required to perform on a regular basis. The claimant refused to sweep the floor because he was angry at the supervisor's assignment of two floaters to other jobs. The claimant had no personal allergy that prevented him from sweeping the floor. There was no cross contamination possible for the claimant sweeping the floor and he was told the same when he was instructed to sweep the floor. The claimant's reference to contamination is an attempt to justify his refusal to carry out a reasonable order from his supervisor. It was reasonable for the employer to ask the claimant to sweep the floor. The claimant's refusal to follow the employer's instructions is insubordination and is misconduct sufficient to disqualify him from receiving unemployment insurance benefits. Benefits are denied.

DECISION:

The October 27, 2004, reference 05, decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

tkh/pjs