

**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**

**THOMAS E ALBERTS
1420 – 3RD AVE S
DENISON IA 51442**

**APC COMPANY INC
ATTN LINDA WILSON
2425 SE OAK TREE CT
ANKENY IA 50021**

**Appeal Number: 05A-UI-08290-HT
OC: 07/03/05 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

STATEMENT OF THE CASE:

The claimant, Thomas Alberts, filed an appeal from a decision dated July 29, 2005, reference 01. The decision disqualified him from receiving unemployment benefits. After due notice was issued a hearing was held by telephone conference call on August 29, 2005. The claimant participated on his own behalf. The employer, APC Company, Inc. (APC), participated by Plant Manager Bob Loftus.

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: Thomas Alberts was employed by APC from August 24, 2004 until March 24, 2005. He was a full-time laborer.

The claimant's last day of work was January 12, 2005. He called in the next day and notified Plant Manager Bob Loftus he would not be in for two weeks because he had injured himself at home and bruised his ribs. Two weeks later he called and said he needed to be off another two weeks.

At the beginning of March the company made an appointment for Mr. Alberts with the company doctor to confirm the injury and "get a second opinion." The appointment was March 7, 2005, after which the doctor confirmed the claimant had broken ribs and would need to be off two more weeks. An appointment was scheduled for March 21, 2005, to see if he could be released to work, but on March 21 and 22, 2005, the claimant could not be seen by the doctor because there were too many people waiting, so he was confirmed for a 9:15 a.m. appointment on March 23, 2005.

On March 23, 2005, the claimant notified Mr. Loftus he had been released to return to work the next day but then on March 24, 2005, he called in sick saying the doctor had given him a prescription the day before for sinus problems. The employer checked with the doctor's office and was told the claimant was only given a sample of a mild decongestant. The doctor also notified the employer Mr. Alberts would have been released to return to work on March 23, 2005, but showed up for his appointment so intoxicated that his keys were taken away from him and he was ordered to call someone to come and get him.

Mr. Loftus called the claimant back and questioned him about what the doctor's office had reported. Mr. Alberts admitted he had been "out partying" the night before. At the appeal hearing he admitted the same thing, saying he had partied five, six, seven or eight hours, he was not sure, and had consumed a 12-pack of beer, plus had a beer shortly before going to his doctor's appointment. He was discharged by Mr. Loftus over the phone on March 24, 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 employer was very lenient with the claimant's absences, allowing him to take time off and even setting up appointments for him with the company doctor to monitor his progress. The claimant's return for all of this consideration was to appear for his doctor's appointment so inebriated that not only was the physician unable to release him to work because of it, but so drunk that he could not be trusted to drive home. He could have been released a day earlier if he had been sober. The claimant appearing for an examination by a company doctor to determine if he is able to return to work should adhere to a reasonable standard of conduct, that is, to appear sober and ready to return to work had the doctor released him. His failure to be sober put off his return to work date and this is conduct not in the best interests of the employer. He is disqualified.

DECISION:

The representative's decision of July 29, 2005, reference 01, is affirmed. Thomas Alberts is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount provided he is otherwise eligible.

bgh/pjs