

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

OLIVER JONES
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DAVENPORT IA 52806

VON HOFFMANN CORPORATION
C/o HUMAN RESOURCES DEPT
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Appeal Number: 05A-UI-04883-BT
OC: 04/17/05 R: 04
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:

Oliver Jones (claimant) appealed an unemployment insurance decision dated May 2, 2005, reference 01, which held that he was not eligible for unemployment insurance benefits because he was discharged from Van Hoffman Corporation (employer) for work-connected misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 26, 2005. The claimant participated in the hearing with Joe Jackson and Attorney Leanne Tyler. The employer participated through Kathi Lannom, Human Resources Manager. Claimant's Exhibit A and Employer's Exhibits One and Two were admitted into evidence.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a full-time web operator from May 1989 through April 15, 2005. He was discharged for falsification of company documentation. On April 12, 2005, he left the facility while on the clock and failed to subsequently account for this absence on his time records. The claimant was aware of the employer's work policy, which requires employees to clock out when leaving the employer's premises. Employees are also expected to notify the supervisor when leaving company property for other than authorized meal periods. Violation of either of these policies could result in progressive discipline. The more serious infractions of falsification of company documentation and leaving the plant during a work shift without the supervisor's prior approval could result in immediate termination if violated.

The claimant was aware of these rules, but additionally, he also had an incident report in his personnel file from February 14, 2001, which specifically addressed leaving the employer premises while on the clock. The claimant had left the facility to go to a local grill for dinner but failed to clock out. The "employer explained that while on the clock, he is not to be off premises." He was placed on a final written warning for making a threat of violence towards a co-worker. Employees cannot be promoted for one year after receiving a written warning but the employer allowed the warning to be "...effective, for purposes of promotional opportunity, for 6 months only, ending on January 10, 2004." However, even though the warning was written on July 9, 2003 it was not signed until January 25, 2004.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a.

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 has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The claimant was discharged for falsification of company documentation. He knowingly left the facility without clocking out on his time card and failed to document the time missed on his time card. This falsification occurred after he had been placed on a final written warning for an unrelated incident and after he already had an incident report in his personnel file regarding the same violation. The claimant contends he did nothing wrong since he was entitled to a break but fails to understand that is not the issue. The claimant further argued that he was treated differently; however, the other employee who was with him and who violated the same work rule was discharged as well. The claimant's violation of a known work rule was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

DECISION:

The unemployment insurance decision dated May 2, 2005, reference 01, is affirmed. The claimant is not eligible to receive unemployment insurance benefits because he was discharged from work for misconduct. Benefits are withheld until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

sdb/pjs