

**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**

**DONALD R GIBSON JR  
200 N 6<sup>TH</sup> ST  
CLINTON IA 52732**

**EMPLOYER SERVICE BUREAU INC  
PO BOX 294  
CLINTON IA 52733-0294**

**Appeal Number: 04A-UI-00459-HT  
OC: 12/15/02 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, 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 - Suspension

STATEMENT OF THE CASE:

The claimant, Donald Gibson, filed an appeal from a decision dated January 7, 2004, reference 11. The decision disqualified him from receiving unemployment benefits. After due notice was issued a hearing was held by telephone conference call on February 9, 2004. The claimant participated on his own behalf. The employer, Employer's Service Bureau, Inc. (ESB), participated by Superintendent John Rausenberger.

#### 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: Donald Gibson was employed by ESB beginning in March 2003. He had been assigned to Nestles/Purina. On December 12, 2003, he approached the on-site coordinator and asked to be moved to another job, that he did not want to continue to do the job he had been assigned. The coordinator declined to change his assignment and he refused to continue with his job. He was escorted off the premises and the matter was reported to Superintendent John Rausenberger. Mr. Rausenberger investigated the matter on Monday, December 15, 2003, at which time Mr. Gibson told him he had hurt his shoulder the previous Friday and that was why he did not want to continue working. However, the claimant had never notified the on-site coordinator of this when he requested to change jobs.

The decision was made to place the claimant on a three-day suspension rather than discharging him. He served the suspension on December 15, 16, and 17, 2003, and returned to work on December 18, 2003.

#### 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).

871 IAC 24.32(9) provides:

(9) Suspension or disciplinary layoff. Whenever a claim is filed and the reason for the claimant's unemployment is the result of a disciplinary layoff or suspension imposed by the employer, the claimant is considered as discharged, and the issue of misconduct must be resolved. Alleged misconduct or dishonesty without corroboration is not sufficient to result in disqualification.

The claimant was suspended from work for a disciplinary issue. Although the claimant may have had a good reason to request the coordinator to assign him to a different job, he never conveyed this information. All the coordinator knew was that the claimant was refusing to do the job he was assigned without any reason being offered for the refusal. A refusal to follow the instructions of the supervisor is conduct not in the best interests of the employer and the claimant is disqualified.

DECISION:

The representative's decision of January 7, 2004, reference 11, is affirmed. Donald Gibson is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount provided he is otherwise eligible.

bgh/kjf