

**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**

**Appeal Number: 06A-UI-00631-HT  
OC: 12/18/05 R: 04  
Claimant: Appellant (2)**

**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.

**DONALD M PECINOVSKY  
APT 227  
1600 BUTTERFIELD  
DUBUQUE IA 52001**

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.

**EAGLE WINDOW AND DOOR INC  
ATTN AMY TURNER  
PO BOX 1072  
DUBUQUE IA 52004**

---

(Administrative Law Judge)

---

(Decision Dated & Mailed)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Donald Pecinovsky, filed an appeal from a decision dated January 10, 2006, reference 01. The decision disqualified him from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on February 2, 2006. The claimant participated on his own behalf. The employer, Eagle Window and Door, participated by Human Resources Representative Amy Turner.

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 Pecinovsky was employed by Eagle Window and Door from June 6 until July 8, 2005. He was a full-time material handler.

On June 22, 2005, the claimant tripped on a curb in the company parking lot and hurt his left knee. He was seen by the company nurse and doctor, and his own doctor. He was released to return to work on light duty, but the employer's insurance company determined it was not a work-related injury. The employer's policy does not provide for light-duty work for non-work-related injuries. Another policy provides for discharge of any employee who is unable to work for a time greater than the time worked.

On July 8, 2005, Human Resources Representative Amy Turner notified the claimant by certified mail that his employment was terminated since he had missed more days than he had worked.

#### REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes he is not.

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 claimant was discharged for violation of a company policy. The policy provides for discharge of any employee who has been off work more days than the employee has worked. The claimant was not able to work due to an injury. Regardless of whether it was work related, it was not due to any willful or deliberate act on his part. The employer has provided no evidence of misconduct leading to the discharge, and disqualification may not be imposed.

DECISION:

The representative's decision of January 10, 2006, reference 01, is reversed. Donald Pecinovsky is qualified for benefits provided he is otherwise eligible.

bgh/kjw