

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

DARYN B WAGLER  
1998 – 355<sup>TH</sup> AVE  
BOX 51  
WEVER IA 52658

INDUSTRIAL TOOLING  
& FABRICATION INC  
3212 CRABTREE LN  
FORT MADISON IA 52627

Appeal Number: 05O-UI-00077-DWT  
OC: 12/28/03 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 - Discharge

STATEMENT OF THE CASE:

Daryn B. Wagler (claimant) appealed a representative's August 23, 2004 decision (reference 05) that concluded the claimant was not qualified to receive unemployment insurance benefits, and the account of Industrial Tooling & Fabrication, Inc. (employer) would not be charged because the claimant had been discharged for disqualifying reasons. A hearing was held on September 28, 2004. Both parties participated in the hearing. Based on the evidence presented during the hearing, an administrative law judge affirmed the decision and held the claimant was not qualified to receive unemployment insurance benefits.

The claimant appealed this decision to the Employment Appeal Board. The Employment Appeal Board did not receive a tape of the September 28, 2004 hearing. Since the tape could not be reviewed, the Employment Appeal Board remanded this matter to the Appeals Section for a new hearing.

After hearing notices were again mailed to the parties' last-known addresses of record, a telephone hearing was held on January 19, 2005. The claimant did not respond to the hearing notice for this hearing and did not participate in the hearing. Marni Shaddox, the human resource assistant, appeared on the employer's behalf. Based on the evidence, the arguments of the employer, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

#### ISSUE:

Did the claimant voluntarily quit his employment for reasons that qualify him to receive unemployment insurance benefits, or did the employer discharge him for work-connected misconduct?

#### FINDINGS OF FACT:

The claimant started working for the employer on January 14, 2004. The claimant worked as a full-time forklift driver. Jeff Laverty became the claimant's supervisor just shortly before the claimant's employment ended. The claimant's previous supervisor did not strictly enforce the employer's rules, but Laverty did.

In late July, Laverty gave the claimant and another employee a written warning for not working when they were supposed to be working. The claimant was not on an authorized break when Laverty saw him. The claimant refused to sign a form acknowledging the employer gave him a verbal warning. On August 2, 2004, the claimant refused to move parts with the forklift that were outside the CNC area or the area the employer had hired the claimant to work. The claimant indicated the job assigned was not part of his job requirement or job duty. The employer tried to explain to the claimant that part of his job required the claimant to follow the employer's instructions. The claimant still refused to move parts that were outside the CNC area. When Laverty indicated he would have to give the claimant a three-day suspension so the claimant could think about the consequences of refusing to follow the employer's directions, the claimant indicated he only needed a minute because he still refused to do work that was outside the CNC area. The employer then discharged the claimant.

#### REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code §96.5-2-a. For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The evidence indicates the claimant did not like his new supervisor, Laverty. On August 2, the employer gave the claimant a reasonable job assignment and the claimant refused to do the assigned job. After the claimant learned the employer was going to give him a three-day suspension so he could rethink his decision, the claimant indicated the employer might as well discharge him because he would not do any work outside of the CNC area. The employer

discharged the claimant because the claimant intentionally failed to perform an assigned job. The claimant committed work-connected misconduct on August 2, 2004. As of August 1, 2004, the claimant is not qualified to receive unemployment insurance benefits.

DECISION:

The representative's August 23, 2004 decision (reference 05) is affirmed. The employer discharged the claimant for reasons that constitute work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of August 1, 2004. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charge.

dlw/sc