

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

AARON S MENEFFEE  
530 S DAVIS  
OTTUMWA IA 52501

EXCEL CORPORATION  
c/o FRICK UC EXPRESS  
PO BOX 283  
ST LOUIS MO 63166

Appeal Number: 05A-UI-00634-JTT  
OC: 12/12/04 R: 03  
Claimant: Respondent (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, 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5(2)(a) – Discharge for Misconduct  
Section 96.3(7) – Recovery of Overpayment

STATEMENT OF THE CASE:

Excel filed a timely appeal from the January 5, 2005, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on February 2, 2005. The claimant did not respond to the notice of the hearing and did not participate. Excel participated through Adrianna Cobos, Human Resources Associate, with witness Tania Teeter, Human Resources Manager. Exhibits One through Seven were received into evidence. In addition, the administrative law judge has taken judicial notice of the Missouri State Courts Administrator's on-line records regarding case number 04M7-CR00598, pending in the 41st judicial district.

## FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Aaron Menefee was employed by Excel as a full-time department supervisor from September 11, 2001 until November 11, 2004, when Ms. Teeter and the plant manager, Randy Zorn, discharged him for misconduct.

The last incident that prompted Excel to discharge Mr. Menefee occurred on November 6, 2004. On that date, Mr. Menefee was arrested, charged, and held for bond in connection with an alleged assault upon his brother. Mr. Menefee remained in custody until November 9. During that period, he missed work on November 8-9, due to being incarcerated. The brother also is a supervisor for Excel. The brother was hospitalized as a result of the altercation. Mr. Menefee appeared for work on November 10 and met with Ms. Teeter and Mr. Zorn. Mr. Menefee advised he had gotten into the fight with his brother at his mother's house in Missouri, that the police had been summoned, and that he had been incarcerated on an assault charge. Mr. Menefee further advised the employer that his brother had tried to kick him, so he "punched his face in." Ms. Teeter advised Mr. Menefee that she was going to perform a termination review and sent Mr. Menefee home. As part of the termination review, Ms. Teeter reviewed Mr. Menefee's performance evaluation dated May 21, and written reprimands Mr. Menefee received on April 22, for failing to follow a directive to rework some product, on August 9, for leaving his work area prior to completing all of his assigned daily tasks, and November 3, for assigning an employee to perform a task she was not trained to perform. See Exhibits Three through Seven.

The employer concluded that Mr. Menefee's assaultive behavior violated two written company policies. The policies are contained on the employer's website under the heading of "Other Involuntary Terminations," as follows:

Examples of misconduct that may lead to termination include—but are not limited to—the following:

- Disorderly conduct or improper relations with other Cargill employees.
- Activities that reflect adversely on Cargill's reputation and welfare.

See Exhibit One.

The administrative law judge has reviewed and taken judicial notice of the Missouri State Courts Administrator's official on-line records regarding case number 04M7-CR00598, pending in the 41st judicial district. Those records indicate that on November 7 Mr. Menefee was charged in Macon County with class "C" felony assault and that the matter is still pending. The records further indicate that the court has entered an order prohibiting Mr. Menefee from having any contact with the victim.

Mr. Menefee established a claim for benefits that was effective December 12, 2004 and has received \$1,550.00 in benefits since that time.

## REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Mr. Menefee was discharged for misconduct in connection with his employment. It does.

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).

Since Mr. Menefee was discharged, the employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

Violation of a specific work rule, even off-duty, can constitute misconduct sufficient to disqualify a claimant from unemployment insurance benefits. See Kleidosty v. Employment Appeal Board, 482 N.W.2d 416, 418 (Iowa 1992). In this case, the employer had two specific work rules that were violated by Mr. Menefee. Neither rule indicates it is limited to on-duty or on-site conduct. Mr. Menefee's off-work and off-site conduct negatively impacted the employer's interests in several ways. First, Mr. Menefee was not available for work on two days. Second, Mr. Menefee's brother was rendered unable to work for approximately two weeks. Third, Mr. Menefee's legal problems made it impossible for him to be in the same location as his brother. Fourth, Mr. Menefee is being prosecuted for a violent felony offense and has admitted

to his employer that he did indeed assault his brother and co-worker. Mr. Menefee's conduct was—albeit indirectly--in wanton disregard of the employer's interests and the standards of behavior which the employer had a right to expect of its employees. See 871 IAC 24.32(1)(a).

Based on a careful review of the evidence in the record and the applicable law, the administrative law judge concludes that Mr. Menefee was discharged for misconduct in connection with his employment. Accordingly, a disqualification will enter.

Having determined that Mr. Menefee is disqualified for benefits, the \$1,550.00 he has received represents an overpayment. Mr. Menefee will have to repay that amount.

**DECISION:**

The Agency representative's decision dated January 5, 2005, reference 01, is reversed. The claimant is disqualified for benefits 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. The employer's account will not be charged. The claimant is overpaid benefits of \$1,550.00.

jt/pjs