

**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 A GOBLE
1314 PINE
BURLINGTON IA 52601**

**CLEAR FALLS BOTTLED WATER &
CONDITIONING INC
PO BOX 01063
BURLINGTON IA 52601-1063**

**Appeal Number: 04A-UI-01455-B4T
OC: 01-04-04 R: 04
Claimant: Appellant (3R)**

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
Section 96.5-1 – Voluntary Quit
Section 96.4-3 – Able and Available for Work

STATEMENT OF THE CASE:

Donald A. Goble appealed a decision of the representative dated February 4, 2004 reference 02, that held the claimant voluntarily left his employment with Clear Falls Bottled Water & Conditioning Inc. on June 5, 2003 without good cause. Benefits were denied. A telephone hearing was held pursuant to due notice. Donald A. Goble participated. No one responded on behalf of the employer. The employer did not participate in the hearing. Official notice was taken of the decision under consideration and the pages attached thereto.

FINDINGS OF FACT:

Donald A. Goble was initially employed with Clear Falls Bottled Water & Conditioning Inc. in September 2002. The claimant was employed to deliver and repair water softeners for Clear Falls Bottled Water & Conditioning Inc.

During the ten-year of the claimant's employment he was never warned that his job was in jeopardy on any occasion.

On June 5, 2003, the claimant held a discussion with Jamie Lillie. The claimant and Jamie Lillie utilized a certain van in performing job duties for the employer. In addition, the van was utilized by the father of Jamie Lillie, who was the manager of the facility. A bottle had been found in the car and it was suspected to have contained a prohibited substance. The claimant was not aware that the incident had occurred and he agreed to take a drug test. Jamie Lillie would not take a drug test because he did not want his father to know that he was using unlawful substances. After further discussion, the claimant was placed on a two-week probation by Jamie Lillie.

On June 19, 2003, the claimant returned to the employer and was informed by Jamie Lillie that there was no work available. Donald A. Goble also held conversations on June 21 and June 23 with Jamie Lillie and again was informed there was no work that was available to him.

On June 23, 2003, the claimant was informed that he was being laid off from his employment.

While the claimant was laid off he obtained work with Derrich Hivgen as a self-employed person. Following June 23, 2003, the claimant became self-employed through and including December 19, 2003 when no more work was available to him as a self-employed person which was provided by Derrich Hivgen.

REASONING AND CONCLUSIONS OF LAW:

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).

Iowa Code Section 96.5-1 provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

Iowa Code Section 96.4-3 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

871 IAC 24.32(4) provides:

(4) Report required. The claimant's statement and the employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

The employer has failed to participate and provide testimony or evidence which would justify a conclusion that the claimant intended to sever his relationship as an employee. Following the discovery of a bottle allegedly containing prohibited substances in a van utilized by the claimant and Jamie Lillie, son of the owner or supervisor. The claimant was clearly suspended on

June 5 by Jamie Lillie. Following the suspension, the claimant was later informed on June 23, 2003 that there was no longer any work available to him.

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 suspension of the claimant occurred on June 5, 2003 and ultimately the claimant was discharged on June 23, 2003 following the suspension that occurred on June 5, 2003.

Under such circumstances, the administrative law judge concludes that Donald A. Goble was discharged from his employment with Clear Falls Bottled Water & Conditioning Inc. on June 5, 2003 within the intent and meaning of section 96.5-2-a and Section 871 IAC 24.32(9) , hereinabove set forth.

Normally benefits would be allowed to the claimant provided he was otherwise eligible following a discharge of the claimant. However, the claimant clearly became self-employed on and after June 23, 2003 through and including December 19, 2003.

871 IAC 24.23 provides that individuals devoting time and effort to becoming self-employed are not available for work or eligible for unemployment insurance benefits.

The testimony of the claimant clearly established that he intended and did become self-employed by working job assignments provided to him by Darrich Hivgen. The claimant was therefore self-employed and could not and would not be available for work within the intent and meaning of Iowa Code Section 96.4-3 from June 5, 2003 through December 19, 2003.

This matter is remanded to the unemployment insurance services division for inquiry with respect to the claimant's availability for work following December 19, 2003 which was the last day of his self-employment provided by job assignments from Derrich Hivgen.

DECISION:

The unemployment insurance decision dated February 04, 2004 reference 02 is modified. Donald A. Goble was discharged from his employment with Clear Falls Bottled Water & Conditioning Inc. on or about June 5, 2003 but was self-employed through December 19, 2003. Donald A. Goble is denied benefits effectively on and after June 5, 2003. This matter is remanded for inquiry with respect to the claimant's availability for work following December 19, 2003.

sb/b