

**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**

**JAMES SCHMIDT  
2416 BARKER ST  
CLINTON IA 52732**

**CAPTAIN CLEAN LTD  
5400 DOWNS BLVD SW  
CEDAR RAPIDS IA 52404-4323**

**Appeal Number: 04A-UI-05826-ET  
OC 04-25-04 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/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the May 12, 2004, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on June 15, 2004. The claimant participated in the hearing. Brad Lehman, Manager and Co-Vice-President, participated in the hearing on behalf of the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time supervisor for Captain Clean Ltd. from July 8, 2002 to April 27, 2004. He was discharged for “numerous safety infractions.” On July 24, 2003, the

claimant received a verbal warning and on September 23, 2003, he received a written warning for failure to follow confined space and proper lock-up procedures. On December 31, 2003, Manager Brad Lehman met with the claimant and two other employees regarding their work attitudes, the importance of following work rules, job site problems and keeping busy on jobs. On February 13, 2004, the claimant received a written warning and three-day suspension for failing to call employees in and respond to an overnight call from the job site. On February 27, 2004, Mr. Lehman completed an incident report and talked to the claimant after a water jet came loose from a bucket due to poor welds and the foot pedal was disabled in violation of safety regulations. Following that incident, the ADM Boiler House Supervisor expressed concern about the claimant's performance and failure to follow safety procedures and stated ADM did not want the claimant to work in the boiler house area. On April 21, 2004, the claimant did not follow the employer's instructions on a job causing a jet to come out of a tank, forcing two ADM employees to run because of the potential injury from 10,000 pounds of pressure in the jet. The claimant did not use the foot pedal and did not have a radio so the jet could not be shut off without running down to the truck. The claimant had told Mr. Lehman at the beginning of the day that the foot pedal was in place and ready to go. When Mr. Lehman approached the claimant following the incident the claimant said they had a "little mishap" and again indicated the foot pedal was in place. While investigating further, Mr. Lehman discovered the claimant did not use the side jets as instructed, but used the front jets instead and the foot pedal was not in place. When Mr. Lehman discussed the situation with the claimant he stated he was told to use the front jets and also said Mr. Lehman could not remember what directions he gave but another employee that was present when Mr. Lehman gave the instruction confirmed he had stated they were to use the side jets, not the front jets. As a result of the situation, ADM stopped work on that job for one and one-half weeks and then had the employer's competition finish the job causing the employer to lose \$6,000.00. On April 27, 2004, Mr. Lehman observed the claimant failing to wear his required face shield and not using proper lock out procedures. When Mr. Lehman confronted him about those situations the claimant shrugged his shoulders and continued to refuse to put on his face shield until Mr. Lehman handed it to him. The claimant also did not have his safety harness on and did not have his name on his lock as required and displayed an attitude that he did not care about following the required procedures. After considering the last two incidents and the fact that ADM, which comprises 98 percent of the employer's business, did not want the claimant to work there any longer, the employer notified the claimant his employment was terminated. Two to three weeks prior to the termination, the claimant asked Mr. Lehman if his job was in jeopardy and Mr. Lehman stated at that time it was not, but there were things that needed to be discussed. The employer made the decision to terminate the claimant's employment following the April 21 and April 27, 2004 incidents, in part because of his attitude about his errors.

#### REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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 employer has the burden of proving disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The claimant received a verbal and written warning for failure to follow confined space and proper lock-up procedures July 24 and September 23, 2003, a written warning, three-day suspension and 30 day probation February 27, 2004, for failing to follow proper procedures. On February 13, 2004, the claimant received a written warning and three-day suspension for failing to call employees in and respond to an overnight call from the job site. On February 27, 2004, Mr. Lehman completed an incident report and talked to the claimant after a water jet came loose from a bucket due to poor welds and because the foot pedal was disabled in violation of safety regulations, a situation that could have resulted in serious injury to others. Despite the previous warnings regarding the safety issues, the claimant failed to follow Mr. Lehman's instructions to use the side jets rather than the front jet, have the foot pedal in place and have a radio so the machine could be stopped immediately rather than forcing someone to run to the truck and turn it off there. The claimant's disdain for safety procedures was also demonstrated by his failure to wear a face shield, a safety harness, or have his name on his lock as required. The administrative law judge is concerned about the claimant's failure to take responsibility for any of the situations, many of them serious safety issues, and concurs with the employer's belief that the claimant's attitude about the incidents make it less likely his behavior would have improved if the employer allowed him to continue his employment. The warnings and suspension put the claimant on notice that a further incident could result in termination. The claimant's actions April 21 and April 27, 2004, were not isolated incidents. The claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the

employer's interests and the employee's duties and obligations to the employer. Consequently, the administrative law judge concludes the employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Benefits are denied.

DECISION:

The May 12, 2004, reference 01, decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

je/kjf