

**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**

**STEVEN A MINTON
404 – 6TH ST
BOONE IA 50036-2605**

**HAWKEYE WOOD SHAVINGS INC
5511 E UNIVERSITY
DES MOINES IA 50327**

**Appeal Number: 06A-UI-02313-HT
OC: 01/29/06 R: 02
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, 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

STATEMENT OF THE CASE:

The claimant, Steven Minton, filed an appeal from a decision dated February 15, 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 March 15, 2006. The claimant participated on his own behalf. The employer, Hawkeye Wood Shavings, Inc., (Hawkeye) participated by Human Resources Representative Colleen Adkins and Dispatcher Sandra Goering.

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: Steven Minton was employed by Hawkeye from

July 21 until October 21, 2005. He was a full-time over the road truck driver. As a driver he was required to check in with dispatch between 6:00 a.m. and 10:00 a.m.

The claimant received verbal warnings from Safety Director, Sue Schlampp, because he was calling in after the required time frame. He stated he was taking a form of anti-depressant and that might cause the trouble. She told him to go see his doctor to take care of the matter but he did not and had several incidents of late calls after that discussion. In addition, he was late on several deliveries by as much as a day due to late starts and other matters.

On one occasion he drove his truck into a dead end and, when he tried to back out, became stuck in the mud. The truck had to be towed out at a cost of approximately \$650.00.

On October 17, and 18, 2005, the claimant again did not call in during the required 6:00 a.m. to 10:00 a.m. window. He was discharged by Ms. Schlampp on October 21, 2006.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes he is.

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 had been advised of the requirement to call in within the specified time frame to check in with the dispatcher. He consistently failed to do this in spite of warnings given to him by the safety director. His operation of the company vehicle was not prudent or professional when he inadvisably drove down a dead end street from which he could not exit, miring the truck in mud and incurring towing charges.

Overall, not one single incident would constitute misconduct but the on-going problems of late calls, late deliveries and negligent operation of the vehicle is sufficient to establish a course of conduct which, overall, rises to the level of misconduct. With the final incidents of untimely calls to the dispatcher, which precipitated the decision to discharge, the claimant is guilty of substantial, job-related misconduct and is disqualified.

DECISION:

The representative's decision of February 15, 2006, reference 01, is affirmed. Steven Minton is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount, provided he is otherwise eligible.

bgh/kkf