

**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**

**THOMAS S BYRUM
1111 JERSEY RIDGE RD #4
DAVENPORT IA 52803**

**SPANN'S PEST CONTROL LC
SPANN'S PEST CONTROL
5608 QUERCUS LN
DAVENPORT IA 52806**

**Appeal Number: 05A-UI-08724-H2T
OC: 07-03-05 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, 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/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the August 11, 2005, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on September 12, 2005. The claimant did participate. The employer did participate through Deb Haussmann, Customer, Deb Wilson, Customer and Thomas Spann, Owner.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a route technician and salesperson, full-time, beginning March 8, 2004 through June 21, 2005 when he was discharged. The claimant was discharged due to customer complaints about his work performance and how he treated them. On June 18, the

claimant got into an altercation with customer Deb Haussman. Ms. Haussman expected the claimant to be spraying at three particular locations. She called the claimant to find out where he was and he told her he was running late and he was "irate" with her questioning his whereabouts. The claimant told her that he bent over backwards to help her and he did not appreciate her calling to complain about him or his work performance. The claimant then began yelling at Ms. Haussman and berating her for making complaints about his work when he had given up his weekend to get the spraying she ordered done. At one point during the conversation Ms. Haussman put the claimant on speakerphone, which further irritated him. After listening to the claimant yell at her for a period of time, Ms. Haussman hung up on him called the branch manager and indicated that the claimant was no longer to do any work for her or she would take her business elsewhere. Ms. Haussman is a real estate agent who frequently would hire Spann's Pest Control to spray houses she was attempting to sell. Ms. Haussman had previously complained about the claimant being too chatty when he showed up to perform a job. As a result of that complaint the claimant had been given a written warning on November 6, 2004 indicating that he should do his job and not chat with the customers or their employees. By May of 2005 the claimant had been warned that his job was in jeopardy due in part to his failure to meet the customers expectations.

Another customer Deb Wilson also complained to Mr. Spann about the claimant's behavior. The claimant was late arriving for scheduled appointments and then sat in his truck talking on his cell phone instead of spraying for bugs. On one occasion she complained directly to the claimant that she did not think he was doing a good job spraying for bugs and the claimant 'got in her face' trapping her in a corner arguing with her about her complaint. After that event Ms. Wilson set up appointments only for occasions when her husband was home and in the house with her. Thereafter her husband would follow the claimant around while he sprayed to insure that he was doing what he was being paid to do.

On June 20 the claimant went home sick. The claimant was not discharged because he went home sick but because of all the customer complaints made about him that could have potentially cost the employer money and valued customers.

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 claimant was the subject of numerous customer complaints. As a result of those complaints the claimant had been disciplined and warned that his job was in jeopardy. On June 18, the claimant got into what amounted to a screaming match with a customer. The customer had called to inquire why the work she had scheduled was not done and the claimant began to yell at her and berate her. The claimant had been warned previously not to engage in such conduct. The customer threatened to quit doing business with the employer if the claimant were again assigned to her accounts. The employer discharged the claimant because of customer complaints were costing him business. The claimant was not discharged because he called in sick to work. The claimant knew or should have know that yelling at an berating the employer's customers was conduct not in the employer's best interest. The employer's evidence does establish that the claimant deliberately and intentionally acted in a manner he knew to be contrary to the employer's interests or standards. There was a wanton or willful disregard of the employer's standards. In short, substantial misconduct has been established by the evidence. Benefits are denied.

DECISION:

The August 11, 2005, 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.

tkh/kjf