

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

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Appeal Number: 04A-UI-03493-DWT
OC 03/07/04 R 01
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 are 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 - Discharge

STATEMENT OF THE CASE:

Mark E. Whetzel (claimant) appealed a representative's March 25, 2004 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits, and the account of Margarites Catering (employer) would not be charged because the claimant had been discharged for disqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 19, 2004. The claimant participated in the hearing. Margarite Goodenow, the owner, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked three or four years for the employer. He worked full time and did anything the employer asked him to do such as cleaning vehicles, washing dishes and maintenance work.

During his employment, the employer talked to the claimant several times about reporting to work intoxicated or failing to report to work because he was intoxicated. Even though the employer did not give him any written warnings or suspend him, the claimant understood the employer would discharge him if he reported to work intoxicated after the employer started scheduling him hours that other employees did not want to work.

On March 6, 2004, the claimant went to the employer's facility to use the employer's phone. He was not scheduled to work. The claimant had been drinking the night before. The chef would not allow the claimant to use the phone and asked the claimant to leave. Instead of leaving, the claimant started arguing with employees at work and would not leave. Goodenow was called when the claimant would not leave. When Goodenow arrived, employees were forcibly removing the claimant from the premises. Goodenow concluded the claimant was intoxicated when she saw him on March 6.

On March 8, 2004, the employer discharged the claimant because he disrupted the employer's business on March 6 when he came to work intoxicated and employees had to forcibly remove the claimant.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code §96.5-2-a. For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The claimant knew and understood his job was in jeopardy if he came to work intoxicated. Even though the claimant was not scheduled to work on March 6, he was still an employee who went to the employer's facility and disrupted employees who were working when he refused to leave the facility and then had to be forcibly removed. The claimant's conduct on March 6 amounts to an intentional and substantial disregard of the standard of behavior the employer has a right to expect from an employee. The employer discharged the claimant for reasons constituting work-connected misconduct. As of March 7, 2004, the claimant is not qualified to receive unemployment insurance benefits.

DECISION:

The representative's March 25, 2004 decision (reference 01) is affirmed. The employer discharged the claimant for reasons constituting work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of March 7, 2004. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged.

dlw/kjf