

**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**

**DOUGLAS J NEES  
19404 HENRY ST  
MT CARMEL  
CARROLL IA 51401**

**ALS CORNER OIL CO  
12053 HWY 71 N  
CARROLL IA 51401**

**Appeal Number: 05A-UI-00615-H2T  
OC: 12-19-04 R: 01  
Claimant: Appellant (2)**

**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.

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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 January 10, 2005, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on February 2, 2005. The claimant did participate along with his witness Ladean Ahrens. The employer did participate through (representative) Cindy Tiefenthaler, Office Manager and Roland Tiefenthaler, Owner. Claimant's Exhibit A was received.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a maintenance worker full time beginning June 3, 2003 through December 1, 2004 when he was discharged. On November 29, 2004 Mr. Tiefenthaler

instructed the claimant to go to the store in Storm Lake and to change the drain lines for one of the vanity's in the women's restrooms. The claimant had done some plumbing work before in the form of changing faucets fixtures but he had never changed a drain or run water lines. On December 1, 2004 the claimant and Mr. Tiefenthaler were discussing the plumbing project in Storm Lake and Mr. Tiefenthaler told the claimant he could either go to Storm Lake and change the drain, or punch out. The claimant did not know how to change the drain in Storm Lake. He told Mr. Tiefenthaler, "I'm not a fucking plumber" and punched out and left work. The claimant was discharged for failing to go to Storm Lake and change the drain line.

#### REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

Failure in job performance due to inability or incapacity is not considered misconduct because the actions were not volitional. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979). Where an individual is discharged due to a failure in job performance, proof of that individual's ability to do the job is required to justify disqualification, rather than accepting the employer's subjective view. To do so is to impermissibly shift the burden of proof to the claimant. Kelly v. IDJS, 386 N.W.2d 552 (Iowa App. 1986). Inasmuch as he did attempt to perform the job to the best of his ability but was unable to meet the employer's expectations, no intentional misconduct has been established, as is the employer's burden of proof. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). The employer has not established that the claimant knew how to perform the required plumbing project and was intentionally refusing to perform the job. The question of whether the refusal to perform a specific task constitutes misconduct must be determined by evaluating both the reasonableness of the employer's request in light of all circumstances and the employee's reason for noncompliance. Endicott v. IDJS, 367 N.W.2d 300 (Iowa App. 1985). An employee cannot be expected to perform a task that they do not know how to perform. Since the claimant was not a plumber and had no experience changing drains and no knowledge as to how to change the drain, his refusal to change the drain was not unreasonable. Accordingly, no disqualification pursuant to Iowa Code section 96.5-2-a is imposed.

#### DECISION:

The January 10, 2005, reference 01, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

tkh/pjs