

**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**

**JEFFREY J SCHRADER  
1319 N 4<sup>TH</sup> ST  
CLINTON IA 52732**

**CUSTOM-PAK INC  
86 – 16<sup>TH</sup> AVE N  
CLINTON IA 52732**

**Appeal Number: 05A-UI-02144-H2T  
OC: 01-23-05 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.

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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 February 23, 2005, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on March 16, 2005. The claimant did participate. The employer did participate through (representative) Bonie Hugunin, Vice President Human Resources; Dave Frame, Manufacturing Manager; Lonnie Adrian, Facilitator; and Troy Rittmer, Group Leader.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a machine operator full time beginning April 24, 1989 through January 20, 2005 when he was discharged. On January 20, 2005 the claimant was observed by his coworkers and supervisors to be behaving in an erratic manner as he was cussing and

swearing at his machine and tools. The claimant was also throwing his tools around the work area. Troy Rittmer and Lonnie Adrian observed the claimant and spoke to him. They observed the claimant to be belligerent, holding rambling conversations, using profanity exhibiting red bloodshot eyes, his clothes were messy and his breath and person smelled of alcohol. They believed the claimant had recently consumed alcohol and that he was drunk. Mr. Adrian smelled alcohol on the claimant's breath and person and noticed that the claimant was exhibiting fits of rage and mood swings. Mr. Adrian also noticed a green pop bottle in the claimant's work area that smelled of alcohol. Because of the smell of alcohol and the claimant's erratic behavior the employer decided to have the claimant tested for alcohol consumption. The claimant was taken to Medical Associates where he underwent a Breathalyzer test. The first test revealed that the claimant had an alcohol level of .233. The claimant was tested a second time fifteen minutes later. The second test revealed an alcohol level of .236. The claimant worked the first shift which began at 7:00 a.m. The claimant was tested for alcohol at approximately 2:10 p.m. and 2:26 p.m. At hearing the claimant admitted that he had placed alcohol, rum, in a green pop bottle and was consuming alcohol while he worked on January 20, 2005. The claimant had been given a copy of the employer's drug and alcohol policy which prohibited consuming alcohol while working.

#### 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).

An employer has a right to expect employees to conduct themselves in a certain manner. The claimant disregarded the employer's rights by drinking alcohol while working on January 20, 2005. Testing revealed that the claimant was drunk on January 20, 2005 while at work. The claimant's disregard of the employer's rights and interests is misconduct. As such, the claimant is not eligible to receive unemployment insurance benefits.

DECISION:

The February 23, 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.

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