

**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**

**ANDREW J BEYER  
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OSAGE IA 50461**

**WINNEBAGO INDUSTRIES  
PO BOX 152  
FOREST CITY IA 50436-0152**

**Appeal Number: 05A-UI-07391-SWT  
OC: 07/04/04 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, 4<sup>th</sup> 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

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated July 13, 2005, reference 01, that concluded the claimant was discharged for work-connected misconduct. A telephone hearing was held on August 26, 2005. The parties were properly notified about the hearing. The claimant participated in the hearing with a witness, Andrew Pattschull. Gary McCarthy participated in the hearing on behalf of the employer with a witness, Bruce Heusinkveld. Exhibits One and Two were admitted into evidence at the hearing.

FINDINGS OF FACT:

The claimant worked full time for the employer as a production worker from August 26, 2002, to June 13, 2005. The claimant was informed and understood that under the employer's work rules, unauthorized use of a camera or other type of recording device could result in confiscation of the camera or recording device and disciplinary action. Under the work rules,

cellular phones could only be used during scheduled breaks and employees were not allowed to leave their work area without authorization.

On June 8, 2005, the claimant notified the supervisor that the worker before him and the production process was neglecting to put in all of the screws required. When the problem continued, the claimant decided to use his camera phone to take pictures of the poorer workmanship by his coworker. It upset him because he had received discipline for less serious deficiencies in his work quality. The claimant did not receive permission to take pictures at work.

During a break in the afternoon, the claimant went to see personnel supervisor, Gary McCarthy. He decided to use the record feature on his cellular phone to record his conversation with McCarthy. He did this because he felt that McCarthy had displayed unprofessional behavior toward him a month earlier when he had asked McCarthy about transferring to a different work area. During the meeting with McCarthy, McCarthy became suspicious because of the claimant's questions and his failure to verbally respond to questions and statements McCarthy made. As the claimant was leaving the meeting, McCarthy noticed that he had something in his hand. The claimant had recorded their conversation but did not get permission from the employer before doing so. McCarthy reported what had happened to the security department.

After the meeting, the claimant went back to work. He had missed a mandatory staff meeting. When his supervisor asked him where he was at, the claimant was untruthful and told him he was getting some tax forms from personnel. Later, the claimant was called to the security department and questioned about his cellular phone. He denied taking pictures or recording conversations. When the security officer attempted to confiscate the cell phone, the claimant took the cell phone from the officer's hands. At that point the security officer suspended the claimant for three days.

When the claimant reported back to work on June 13, 2005, the employer discharged him for unauthorized use of a camera and recording device, using his cellular phone during work time, failing to cooperate with the security department, and dishonesty in denying that he used the camera to take pictures and record conversations at work.

#### REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

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's violation of a known work rule was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. The employer adopted reasonable work rules regarding taking pictures and using recording devices at work. The claimant deliberately violated those rules and was untruthful when questioned about this. Work-connected misconduct as defined by the unemployment insurance law has been established in this case.

DECISION:

The unemployment insurance decision dated July 13, 2005, reference 01, is affirmed. The claimant is disqualified from receiving unemployment insurance benefits until he has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

saw/kjw