

**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: 05A-UI-06816-E
OC: 06-05-05 R: 03
Claimant: Respondent (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.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a – Discharge/Misconduct
Section 96.3-7 – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the June 24, 2005, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held in Cedar Rapids, Iowa, before Administrative Law Judge Julie Elder on July 21, 2005. The claimant participated in the hearing with Attorney Richard Feeney. Herb Anderson, General Manager, participated in the hearing on behalf of the employer with Attorney D.J. Smith. Employer's Exhibit One was admitted into evidence.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time supervisor of the water jet machine for Abrasive Jet Tech from February 5, 2004 to June 10, 2005. He was discharged following a final incident where he and another employee ran fork trucks over newly laid asphalt, causing damage to the asphalt when they could have performed the job without crossing the asphalt (Employer's Exhibit One). The claimant testified he made an effort to repair the damage but had other plans for the evening and did not call the employer to tell him of the damage to the asphalt. The employer shared that area of the parking lot with another business and that business paid for the asphalt. The owner of that business was very upset about the damage. The employer spent over two hours trying to repair the damage but was unable to completely restore the asphalt to its previous condition. The employer had several previous problems with the claimant such as his refusal to wear required safety glasses and hearing protection, and his changing the controls on the computer system that ran the tool. The claimant received a written warning March 12, 2004, for losing control after the employer pointed out an error the claimant had made (Employer's Exhibit One). The claimant did not want to clean up after himself and the employer hired one of the claimant's friends to help with the clean-up and as a result the claimant did not do any cleanup (Employer's Exhibit One). The employer had numerous issues with the claimant purposefully not following his instructions and sometimes apparently sabotaging other jobs after the employer made suggestions about jobs he was working on. After the incident with the asphalt, the employer terminated the claimant's employment.

The claimant has claimed and received unemployment insurance benefits after the separation from employment.

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 employer has the burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). While the claimant indicated that he really liked his job and wanted to keep it, his actions do not match his stated intentions of wanting to remain employed with this company. Despite repeated warnings the claimant failed to wear the safety glasses provided by the employer, messed with the computer system that ran the tool when the employer told him to leave it alone, completely lost control after the employer redirected and corrected him on a job in March 2004, and often sabotaged the next job after the employer would correct or suggest alternatives to what he was doing on a specific job. The final straw occurred, however, when the claimant drove his fork truck over newly poured asphalt, made very little effort to repair the damage and, perhaps worst of all, failed to notify the employer of the situation. The claimant had been warned about his behavior and the warning put the claimant on notice that a further incident could result in termination. The claimant's actions June 9, 2005, were not an isolated incident and his conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. Consequently, the employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Benefits are denied.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The June 24, 2005, reference 01, decision is reversed. 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. The claimant is overpaid benefits in the amount of \$1,860.00.

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