

**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**

**KYLE LYNOTT
601 – 5TH ST
TRAER IA 50675**

**MANPOWER INC OF CEDAR RAPIDS
1220 INDUSTRIAL AVE
HIAWATHA IA 52233-1155**

**Appeal Number: 06A-UI-00513-HT
OC: 12/11/05 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

STATEMENT OF THE CASE:

The employer, Manpower, filed an appeal from a decision dated January 5, 2006, reference 01. The decision allowed benefits to the claimant, Kyle Lynott. After due notice was issued a hearing was held by telephone conference call on January 31, 2006. The claimant provided a telephone number of (319)478-8709. The conference operator called this number several times but the only response was a voice mail. The claimant was not available and did not participate. The employer participated by Risk Manager Debbie Chamberlain and Branch Manager Kathy Jablinske.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Kyle Lynott was employed by Manpower from August 17, 2004 until November 2, 2005. During this time he had only one assignment which was at Traer Manufacturing as a press operator.

During the course of his employment he received several warnings regarding safety violations. The final incident was on November 2, 2005, when the press he was operating came to a stop as a fail-safe. Instead of checking out the machine to determine the problem, he by-passed the safety feature and put the machine into operation. As a result \$5,000.00 in damage was done to the machine. The client company contacted Manpower and requested Mr. Lynott be removed.

Kyle Lynott filed a claim for unemployment benefits with an effective date of December 11, 2005. The records of Iowa Workforce Development indicate no benefits have been paid as of the date of the hearing.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes he is.

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 had been advised his job was in jeopardy as a result of his violation of safety procedures. Instead of improving his conduct he continued to act recklessly. The final incident was overriding a machine, which had stopped due to a problem, and caused considerable damage to the client's property. In addition, he jeopardized his own safety which could have resulted in legal and monetary liability to the employer and the clients. This is conduct not in the best interests of the employer and the claimant is disqualified.

DECISION:

The representative's decision of January 5, 2006, reference 01, is reversed. Kyle Lynott is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount provided he is otherwise eligible.

bgh/kjf