

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

SHAUN M PANGBURN  
203 MAIN ST  
RATHBUN IA 52544

BLOOMFIELD FOUNDRY INC  
PO BOX 200  
BLOOMFIELD IA 52537

Appeal Number: 05A-UI-08523-SWT  
OC: 07/24/05 R: 03  
Claimant: Respondent (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 employer appealed an unemployment insurance decision dated August 15, 2005, reference 02, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on September 1, 2005. The parties were properly notified about the hearing. The claimant participated in the hearing. Jack Matheny participated in the hearing on behalf of the employer.

FINDINGS OF FACT:

The claimant worked full time for the employer as a setup operator from August 4, 2004, to July 22, 2005. His supervisor was Jim Mason. Jack Matheny is the human resources director. The claimant was informed and understood that under the employer's work rules, employees were subject to termination after receiving three written warnings. The claimant received a

written warning on February 22, 2005, after he was late for work on February 21, 2005. He was late and absent after February 22 but received no discipline for the absenteeism.

Around July 15, 2005, the employer posted a schedule that listed Saturday, July 23 as a day of overtime work. The claimant asked the human resources director for the day off because his family is involved in drag racing and there was a drag race scheduled for out of town on that day. The human resources director told him that he had to work and would receive the disciplinary action he had coming to him if he missed work. The claimant believed that he would receive a written warning under the employer's policy.

The claimant was absent from work on July 23, 2005, with notice to his supervisor. He received a call from the human resources director while he was already at the location of the drag race and was told that if he did not report to work, he would be discharged. The claimant informed the human resources director that he was too far from work to make it back in time. The human resources director discharged the claimant for missing work without permission.

#### 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 employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

While the employer may have been justified in discharging the claimant, work-connected misconduct as defined by the unemployment insurance law has not been established. The claimant was told that he would receive the discipline due him if he missed work on July 23. The claimant reasonably believed that he was going to receive a written warning and was not told that he would be discharged for missing work until it was too late for him to report to work.

DECISION:

The unemployment insurance decision dated August 15, 2005, reference 02, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

saw/pjs