

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

NEAL SAUL
Claimant

APPEAL NO. 09A-UI-07312-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

OMEGA CABINETS LTD
Employer

**Original Claim: 11-23-08
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the May 8, 2009, reference 02, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on June 5, 2009. The claimant participated in the hearing. Jodi Schaefer, Human Resources Representative, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

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 lead person for Omega Cabinets from February 14, 2000 to April 15, 2009. The employer maintains a warehouse for scratched and dented wood products that employees are then allowed to purchase at a greatly reduced price. Another employee told the employer that the claimant sent a cart of new material to the warehouse rather than scratched or dented materials and then bought them for \$5.00 or \$10.00. The claimant admitted that he cut the plywood to make toy boxes for his grandchildren a “couple of times” and then sent it to the warehouse, where he then purchased it. He argued that while the plywood was not scrap, it had been cut prior to his cutting it for his personal use. The incident fell under the employer’s policy of theft from the company and the employer has the choice of warning the employee or terminating his employment. The employer considered the severity of the situation and terminated the claimant’s 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.

The claimant cut plywood so he could make toy boxes for his grandchildren and then placed that wood in a cart and sent it to the warehouse, where he could purchase it at a greatly reduced price. Because the wood was not scratched or dented, it did not belong in the warehouse, and the claimant was aware of that fact. He did not pay the true value of the product but sent it to the warehouse, where he knew he could get it for a fraction of its real cost. His actions do fall under the category of theft from the company. While the claimant believes he should have been warned prior to termination, this was not an isolated incident of misconduct, because the claimant admitted to doing it on more than one occasion, and the employer exercised its right to terminate rather than warn him about his actions. The administrative law judge concludes the claimant's 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 of the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Benefits are denied.

DECISION:

The May 8, 2009, reference 02, 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.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/kjw