

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MICHAEL J ROBERTS**  
Claimant

**APPEAL NO: 06A-UI-07945-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WINNEBAGO INDUSTRIES**  
Employer

**OC: 12/25/05 R: 02**  
**Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Michael J. Roberts (claimant) appealed a representative's July 27, 2006 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment from Winnebago Industries (employer). After hearing notices were mailed to the parties' last known addresses of record, a telephone hearing was held on August 23, 2006. The claimant participated in the hearing. Gary McCarthy appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

Was the claimant discharged for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant started working for the employer on October 31, 1994. He worked full time as an assembler/fabricator at the employer's Forest City motor home manufacturing plant. His last day of work was June 27, 2006. The employer discharged him on June 30, 2006. The stated reason for the discharge was being incarcerated for more than one work shift in violation of company rule.

The claimant was on notice of the employer's policy that specifies that an employee will be terminated for job abandonment if the employee misses more than one work shift due to being incarcerated. The claimant worked a Monday through Friday, 7:00 a.m. to 3:30 p.m. shift. When he was returning from lunch at about 11:27 a.m. on June 28, the claimant was arrested, taken into custody by Winnebago county law enforcement personnel, and transferred to Franklin county jurisdiction, who held him in custody in a jail in Hardin county.

The reason for the arrest was a probation violation. The claimant had previously been charged in Franklin county with an operating a motor vehicle while intoxicated (OWI) offense; the resolution of that charge included probation which was contingent upon his submission to

substance abuse evaluation by May 5, 2006. The claimant had determined not to expend the funds necessary for the evaluation, even though he had been advised by his probation office that his failure to comply would result in an arrest for a probation violation.

The claimant was not released from custody until bond was posted about mid-day on June 29, 2006. After returning from Hardin county, he stopped by the employer's facility at about 3:55 p.m. on June 29, 2006 and was told he would need to talk to Mr. McCarthy, the personnel supervisor, the next day. The claimant had not been able to call the employer from jail due to phone restrictions, but had not been concerned about calling, as he believed his absence on June 29 would not be a concern, as he had previously been scheduled to be off that day for FMLA (Family Medical Leave) related to a medical appointment for his son. However, on June 30 Mr. McCarthy informed the claimant that FMLA would not apply to June 29 since the claimant actually did not miss the day due to the medical appointment, and that since he had missed all of June 29 and part of June 28 due to being incarcerated, he was discharged under the employer's policy.

#### **REASONING AND CONCLUSIONS OF LAW:**

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982); Iowa Code § 96.5-2-a.

Iowa Code § 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 focus of the definition of misconduct is on acts or omissions by a claimant that “rise to the level of being deliberate, intentional or culpable.” Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The acts must show:

1. Willful and wanton disregard of an employer’s interest, such as found in:
  - a. Deliberate violation of standards of behavior that the employer has the right to expect of its employees, or
  - b. Deliberate disregard of standards of behavior the employer has the right to expect of its employees; or
2. Carelessness or negligence of such degree of recurrence as to:
  - a. Manifest equal culpability, wrongful intent or evil design; or
  - b. Show an intentional and substantial disregard of:
    1. The employer’s interest, or
    2. The employee’s duties and obligations to the employer.

While the result would likely be different if the facts of the incarceration were different, such as, if it was for a criminal charge that was later dismissed or shown to be groundless, under the circumstances of this case the claimant's absence for more than one work shift due to incarceration for an apparent violation of his probation particularly where he could have avoided the violation and arrest shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. Kleidosty v. Employment Appeal Board, 482 N.W.2d 416, 418 (Iowa 1992). The employer discharged the claimant for reasons amounting to work-connected misconduct.

**DECISION:**

The representative’s July 27, 2006 decision (reference 01) is affirmed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving

unemployment insurance benefits as of June 30, 2006. This disqualification continues until the claimant has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

ld/pjs