

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: 04A-UI-03439-SWT
OC 02/22/04 R 04
Claimant: Appellant (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, 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 claimant appealed an unemployment insurance decision dated March 16, 2004, reference 01, that concluded he was discharged for work-connected misconduct. A telephone hearing was held on June 17, 2004. The parties were properly notified about the hearing. The claimant participated in the hearing with his representative, Candy Pastrnak. Judy McBroom participated in the hearing on behalf of the employer with witnesses, James Thomas and Jim Thome. Exhibits A through O and One through Thirty were admitted into evidence at the hearing.

FINDINGS OF FACT:

The claimant worked full time for the employer as an insurance adjuster from April 1, 1996 through February 18, 2004. James Thome was the claimant's supervisor. On December 10, 2002, Thome warned the claimant about failing to close pending cases, failing to submit

paperwork and expense reports in a timely manner, and failing to open salvage on vehicles declared a total loss within 24 hours in violation of the employer's claim handling policies. On August 20, 2003, Thome warned the claimant for closing claims without a supervisor's approval and without any notes or contact letters in the file. Thome warned him on September 12, 2003, about not returning Thome's phone calls, late expense reports, and not properly filling out paperwork relating to salvage vehicles. On January 27, 2004, Thome issued a final written warning to the claimant that detailed the warnings mentioned above. It also warned him about making a car owner an offer after he had declared the vehicle a total loss without receiving draft authority and failing to open salvage within 24 hours in violation of the employer's claim handling policies.

The claimant went on vacation on February 15, 2004. While the claimant was on vacation, Thome received complaints for several vehicle owners who were not being contacted promptly by the claimant. In the first case, the claim had been assigned to the claimant on January 20, 2004. The claimant did not contact the vehicle owner until February 2, 2004, despite repeated messages from the vehicle owner and the customer service representative. He did not provide any explanation as to the delay in the log in which he was required to log such information. In the second case, the claim was assigned on January 21, 2004, but the claimant had not recorded any efforts to contact the vehicle owner until February 10, 2004. In the third case, the claimant was assigned a claim on February 6, 2004, and was required to contact the vehicle owner and view the damaged vehicle within three days. The claimant, however, had not made any contact or logged in any information regarding the claimant by February 13, 2004, so Thome assigned the claim to another adjuster.

After discovering these additional performance problems, which were similar to those about which the claimant was warned in the past, the employer discharged the claimant on February 18, 2004, for violating the employer's policies and his past warnings regarding the employer's claim handling procedures.

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 claimant's violations of known claim handling policies after receiving repeated past warnings for similar conduct were willful and material breaches of the duties and obligations to the employer and substantially disregarded the standards of behavior the employer had the right to expect of the claimant. Work-connected misconduct as defined by the unemployment insurance law has been established in this case.

DECISION:

The unemployment insurance decision dated March 16, 2004, reference 01, is affirmed. The claimant is disqualified from receiving unemployment insurance benefits until he has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

saw/kjf