

**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**

**SHEILA L STAUB
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**PROGRESS INDUSTRIES
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NEWTON IA 50208-1449**

**Appeal Number: 04A-UI-05462-BT
OC: 04/18/04 R: 02
Claimant: Appellant (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 for Misconduct

STATEMENT OF THE CASE:

Sheila Staub (claimant) appealed an unemployment insurance decision dated May 4, 2004, reference 01, which held that she was not eligible for unemployment insurance benefits because she was discharged from Progress Industries (employer) for work-connected misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 7, 2004. The claimant participated in the hearing. The employer participated through Kelly Decker. Employer's Exhibits One and Two were admitted into evidence.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a full-time residential instructor from May 2, 2002 through April 19, 2004. She was discharged for a repeated falsification of her time sheet and a violation of the employer's policies prohibiting abusive language and threatening behavior. The claimant falsified her time sheet on April 5, 2004 by stating that she started at 1:00 p.m. when she actually started at 1:30 p.m. On April 12, 2004, the claimant reported that she worked until 8:00 p.m. when she actually worked until 8:20 p.m. During that same day, the claimant and her co-worker began to argue in front of a client for whom they provide care. The co-worker called other employees while they were at home and the claimant joined in on the telephone calls. The only evidence of abusive language used was when the claimant called the other employee a liar. The employer felt the behavior was threatening because it occurred in front of a client.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. 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 Section 96.5-2-a.

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).

The claimant was discharged for falsification of her time sheet and inappropriate behavior in front of a resident. While the claimant did falsify her time sheet, the last incident would have been a falsification in favor of the employer and to the claimant's detriment. As such, it is determined that her time sheet falsification was an error and not intentional. And while her conduct on April 12, 2004 was clearly inappropriate and unprofessional, it does not rise to the level of disqualifying misconduct. Under the circumstances of this case, the claimant's conduct was at worst the result of unsatisfactory conduct, inadvertence or ordinary negligence in an isolated instance or a good faith error in judgment or discretion. Work-connected misconduct as defined by the unemployment insurance law has not been established in this case and benefits are allowed.

DECISION:

The unemployment insurance decision dated May 5, 2004, reference 01, is reversed. Work-connected misconduct as defined by the unemployment insurance law has not been established in this case and claimant is qualified to receive unemployment insurance benefits, provided she is otherwise eligible.

sdb/b