

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CHARLES B SEELY**  
Claimant

**APPEAL NO: 13A-UI-04915-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**STELLAR INDUSTRIES INC**  
Employer

**OC: 03/31/13**

**Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Charles B. Seely (claimant) appealed a representative's April 19, 2013 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment from Stellar Industries, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 3, 2013. The claimant participated in the hearing. Leanne VanOort 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?

**OUTCOME:**

Affirmed. Benefits denied.

**FINDINGS OF FACT:**

The claimant started working for the employer on August 30, 2004. He worked full time as an assembler at the employer's hydraulic truck equipment manufacturing business. His last day of work was April 3, 2013. The employer discharged him on that date. The stated reason for the discharge was theft of company property.

The employer's business includes using a good amount of cable wire. The employer typically collects scrap metal, including scrap wire, and sells it to a metal recycler. Prior to April 3 there had been some reports to the employer that the claimant had on occasion taken scrap cable wire for himself. The employer did not have any direct evidence and so did not pursue the reports at the time. On April 3 the employer received a report that the claimant had taken some cable wire scraps that morning. VanOort, human resources manager, and another manager approached the claimant as he was in his truck on the first morning break. They inquired of him if he had some scrap cable wire, and the claimant initially denied having any, saying what he had taken out with him earlier in the morning he had put in the recycling bin. The two managers

then pointed out a piece of cable wire between five and eight inches long which was on the floor of the truck. The claimant picked up the piece and handed it over to the managers, and also handed them another piece that was about twelve inches long. He then indicated that he had taken the pieces with him when he left the building earlier in the morning to go to work in another building, with the intent of dropping them into the recycling bin, but had forgotten to do so at the time, but had intended on doing so before he returned from break. Because of the employer's conclusion that the claimant had stolen the scrap cable wire, the employer discharged the claimant.

#### **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.

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445 (Iowa 1979); *Henry v. Iowa Department of Job Service*, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. 871 IAC 24.32(1)a; *Huntoon*, supra; *Henry*, supra. In contrast, 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. 871 IAC 24.32(1)a; *Huntoon*, supra; *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984).

It is true that there is only circumstantial evidence that the claimant took the scrap cable wire with the intent to steal it, but the claimant is unable to adequately explain away that evidence. The burden in unemployment insurance cases is not whether the conduct has been established beyond a reasonable doubt, but whether it has been established by a preponderance of the evidence; the question is whether the evidence overall shows that the alleged conduct is more likely than not to have occurred. Assessing the credibility of the witnesses and reliability of the evidence in conjunction with the applicable burden of proof, as shown in the factual conclusions reached in the above-noted findings of fact, the administrative law judge concludes that the employer has satisfied its burden to establish by a preponderance of the evidence that the claimant did steal the cable wire scraps. The claimant's taking of the cable wire scraps 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. The employer discharged the claimant for reasons amounting to work-connected misconduct.

**DECISION:**

The representative's April 19, 2013 decision (reference 01) is affirmed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of April 3, 2013. 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

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