

**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**

**JACK S KNIGHT
1028 SHAGBARK APT 16
NEVADA IA 50201**

**BURKE MARKETING CORPORATION
PO BOX 209
NEVADA IA 50201**

**Appeal Number: 04A-UI-08540-HT
OC: 07/11/04 R: 02
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, Jack Knight, filed an appeal from a decision dated July 30, 2004, reference 01. The decision disqualified him from receiving unemployment benefits. After due notice was issued a hearing was held by telephone conference call on August 30, 2004. The claimant participated on his own behalf. The employer, Burke, participated by Senior Human Resources Clerk Pat Waltemeyer and Shipping Supervisor Dwaine Purdy. Exhibit D-1 was admitted into the record.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Jack Knight was employed by Burke from June 6, 2001 until July 9, 2004. He was a full-time shipping clerk.

Mr. Knight received a written warning on January 20, 2004, as part of his regular work evaluation. It notified him his job was in jeopardy as a result of his poor work performance, bad attitude and inability to work well with others. He received follow-up verbal warnings for safety violations and other performance issues on February 3, April 9, and July 2, 2004.

On July 8, 2004, Shipping Supervisor Dwaine Purdy found the claimant in the freezer playing a game of checkers on the company computer. This was not his regular break time. Mr. Purdy took the claimant to the office of Distribution Manager Tom Fowler, who sent him home and told him his job status would be reviewed. Mr. Knight called in the next day and was told by Mr. Fowler he was discharged.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes he is.

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 had been advised his job was in jeopardy as a result of his work performance and attitude. In spite of the warning, he was playing a computer game "on the clock" instead of doing his regularly assigned duties. An employer has the right to expect employees to be performing their assigned tasks while they are being paid and the claimant's playing computer games instead of working was conduct not in the best interests of the employer. He is disqualified.

DECISION:

The representative's decision of July 30, 2004, reference 01, is affirmed. Jack Knight is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount, provided he is otherwise eligible.

bgh/b