

**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**

**LONNIE D LETCHER  
1019 MAIN APT 4  
SAVANNA IL 61074**

**EMPLOYERS SERVICE BUREAU INC  
PO BOX 294  
CLINTON IA 52733-0294**

**Appeal Number: 04A-UI-03973-RT  
OC: 02-29-04 R: 04  
Claimant: Respondent (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, 4<sup>th</sup> 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-2-a – Discharge for Misconduct  
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

The employer, Employer's Service Bureau, Inc., filed a timely appeal from an unemployment insurance decision dated April 1, 2004, reference 01, allowing unemployment insurance benefits to the claimant, Lonnie D. Letcher. After due notice was issued, a telephone hearing was held on May 3, 2004 with the claimant participating. John Rausenberger, Superintendent; Leslie Wagner, Laborer; and Rebecca Larson, Laborer, participated in the hearing for the employer. The administrative law judge takes official notice of Iowa Workforce Development Department unemployment insurance records for the claimant. Employer's Exhibit 1 and Claimant's Exhibit A were admitted into evidence.

#### 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: The employer is a contract labor company and at all material times hereto, the claimant was contracted to Nestle Purina. The claimant was employed by the employer as a full-time laborer from November 8, 2002 until he was discharged on February 17, 2004. The claimant was discharged for deliberately throwing a six-by-eight inch bag of dog food weighing between five and ten ounces at a female coworker, Leslie Wagner, hitting her in the face. On February 17, 2004, the claimant took an afternoon break without being entitled to such break at that time. Mr. Martez, Assistant Coordinator, went out and retrieved the claimant and told him to go back to the line. The claimant did so and began taking dog food bags off the line. There are approximately 85 to 90 bags coming off the line per minute. The claimant is to pack the sealed and full bags into a box and throw the empty bags in the trash and throw the open bags into a container. The claimant began doing this while Ms. Wagner was occupied near the claimant picking up some garbage that she had swept up into a pile. When the claimant returned from the break, Ms. Wagner told the claimant that he should tell someone when he went on his break. The claimant then took a full bag of dog food and threw it directly at Ms. Wagner, striking her in the face. Ms. Wagner was not hurt. Ms. Wagner then reported this behavior. The claimant apologized to Ms. Wagner but did not deny throwing the bag. The claimant threw the bag with medium force and appeared to be angry. The claimant never did return to work. He was awaiting a phone call from the employer to tell him to go back to work but the employer never called the claimant to go back to work. The employer did attempt to call the claimant a couple of times to inform him that he was discharged but was unable to reach him. The claimant received no warnings or disciplines for this behavior and there was no other reason for the claimant's discharge.

The employer has specific rules in its employee manual as shown at Employer's Exhibit 1 providing that it is the employer's policy to provide all employees with a safe working environment and each employee must always give safety the highest priority and, further, prohibiting horseplay. The claimant received a copy of this policy and signed an acknowledgement therefor. Pursuant to his claim for unemployment insurance benefits filed effective February 29, 2004, the claimant has received unemployment insurance benefits in the amount of \$1,476.00 as follows: \$164.00 per week for nine weeks from benefit week ending March 6, 2004 to benefit week ending May 1, 2004.

#### REASONING AND CONCLUSIONS OF LAW:

The questions presented by this appeal are as follows:

1. Whether the claimant's separation from employment was a disqualifying event. It was.
2. Whether the claimant is overpaid unemployment insurance benefits. 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).

In order to be disqualified to receive unemployment insurance benefits pursuant to a discharge, the claimant must have been discharged for disqualifying misconduct. The administrative law judge concludes that the employer has met its burden of proof to demonstrate by a preponderance of the evidence that the claimant was discharged for disqualifying misconduct. The employer presented two witnesses, Leslie Wagner and Rebecca Larson, both coworkers of the claimant, who both credibly testified that the claimant deliberately threw a six inch by eight inch full bag of dog food weighing between five and ten ounces at Ms. Wagner striking her in the face. Both witnesses testified that they were present and that they both saw the claimant throw the bag of dog food directly at the claimant striking her in the face and this appeared to be a deliberate act by the claimant. The claimant does not specifically deny throwing the bag but testified that he did not see it hit her and further testified that the bag was empty but if the claimant did not see it hit her then the claimant could not know whether the bag was empty or full. The claimant spent much of his testimony testifying that he has to handle 85 to 90 bags per minute and this is no doubt true. However, the administrative law judge does not believe that handling that many bags even if in a hurry would cause the claimant to deliberately throw one at a coworker. Basically, the testimony of the two employer's witnesses who observed the behavior of the claimant outweighs the claimant's rather equivocal denial. The claimant also spent considerable testimony about the order of taking breaks and that he was on a legitimate break but the claimant did concede that the assistant coordinator, Mr. Martez, had to go out and get him and told the claimant to go back to the line which certainly indicates that the claimant was on an unexpected break. Further, it appears to the administrative law judge that the claimant was admonished by Ms. Wagner for taking a break without informing her and this made him angry and therefore he threw the bag. The claimant testified that a statement by

another coworker, Rick Ballentine at Claimant's Exhibit A, supports his testimony but Mr. Ballentine was not present and his statement supports the fact that the claimant hit Ms. Wagner in the face with a bag of dog food. It does say that he left the line and went outside and had a cigarette after throwing the bag, which the claimant says actually occurred before he threw the bag but the administrative law judge does not believe that this is dispositive or makes Mr. Ballentine's testimony inappropriate or casts any doubt on the testimony of the employer's two witnesses. Finally, the employer has policies clearly providing for employee safety and prohibiting horseplay at Employer's Exhibit 1. The administrative law judge is also not unmindful of the serious problem with workplace violence.

Accordingly, and for all the reasons set out above, the administrative law judge concludes that claimant's behavior in deliberately throwing the bag of dog food was a deliberate act constituting a material breach of his duties and obligations arising out of his worker's contract of employment and evinces a willful or wanton disregard of the employer's interests and is, as a result, disqualifying misconduct. Therefore, the administrative law judge concludes that the claimant was discharged for disqualifying misconduct, and, as a consequence, he is disqualified to receive unemployment insurance benefits. Unemployment insurance benefits are denied to the claimant until or unless he requalifies for such benefits.

Iowa Code Section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The administrative law judge concludes that the claimant has received unemployment insurance benefits in the amount of \$1,476.00 since separating from the employer herein on or about February 17, 2004 and filing for such benefits effective February 29, 2004, to which he is not entitled and for which he is overpaid. The administrative law judge further concludes that these benefits must be recovered in accordance with the provisions of Iowa law.

#### DECISION:

The representative's decision of April 1, 2004, reference 01, is reversed. The claimant, Lonnie D. Letcher, is not entitled to receive unemployment insurance benefits until or unless he requalifies for such benefits. He has been overpaid unemployment insurance benefits in the amount of \$1,476.00.

tjc/b