

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

Appeal Number: 04A-UI-00971-ET  
OC 12-28-03 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, 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.

DONALD NICHOLS JR  
1202 WASHINGTON ST  
KEITHSBURG IL 61442

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.

CAM II WAREHOUSE INC  
6110 – 49<sup>TH</sup> ST  
PO BOX 84  
MUSCATINE IA 52761

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/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the January 22, 2004, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on February 18, 2004. The claimant participated in the hearing. Joe Ramer, Human Resources Manager, participated in the hearing on behalf of the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time forklift operator for Cam II Warehouse from November 1,

1993 to December 29, 2003. On December 24, 2003, the claimant asked his supervisor if he could have December 26, 2003, off work. He did not have any vacation left and his supervisor told him that two employees were already taking vacation that day and consequently the employer needed the claimant to work but would try to let him off by 1:00 p.m. On December 25, 2003, the claimant left a message for the employer stating he was not coming in December 26, 2003, because he had things to do and "if you need any help call someone who gives a shit." The claimant was absent because he did not have his children on Christmas and was going to celebrate the holiday with them December 26, 2003, but he did not pick them up until at least 12:00 p.m. The employer terminated the claimant's employment December 29, 2003, for failing to work after being denied permission to take the day off. He received a verbal warning for tardiness after he overslept and did not call in approximately three months prior to his separation. The claimant was experiencing personal problems during the last year of his employment and admitted that he slowed his pace and did not work to his potential but the employer made exceptions to its policies and accommodated his situation by allowing him time off without requiring that he take vacation and let him use his cell phone when other employees were not allowed to do so.

#### REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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 of proving disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). While the claimant argues he should not have been terminated for one absence, the evidence establishes that he was discharged for failing to report for work after being denied the day off because the employer was short-handed and for leaving an inappropriate message. The claimant was not ill that day but testified he wanted to spend time with his children and initially gave the impression during his testimony that he was picking his children up early in the morning. The administrative law judge might have been persuaded by that argument if the claimant had picked his children up earlier than 12:00 p.m. and if he did not leave a message stating he had other "shit to do" and if the employer needed help it could "call someone who gives a shit." The employer told the claimant it would try to let him off around 1:00 p.m. but the claimant chose to blatantly disregard the employer's specific instruction that it needed him to work December 26, 2003, and his decision is more troubling given that the employer made several accommodations to him during the last year of his employment because of his personal problems. The claimant's actions December 26, 2003, demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. Consequently, the administrative law judge concludes the employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Benefits are denied.

#### DECISION:

The January 22, 2004, reference 01, decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

je/kjf