

**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**

**STEVEN L FOLKERTS
636 N 9TH ST
FOREST CITY IA 50436**

**WINNEBAGO INDUSTRIES
PO BOX 152
FOREST CITY IA 50436-0152**

**Appeal Number: 06A-UI-05976-CT
OC: 12/18/05 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:

Steven Folkerts filed an appeal from a representative's decision dated June 1, 2006, reference 03, which denied benefits based on his separation from Winnebago Industries. After due notice was issued, a hearing was held by telephone on June 27, 2006. Mr. Folkerts participated personally. The employer participated by Ron Young, Commercial and Customer Service Supervisor; Jim Neagle, Lead Certified Technician; and Lorna Zrostlik, Personnel Recruiter. Exhibits One through Nine were admitted on the employer's behalf.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Folkerts was employed by Winnebago Industries from May 30, 2000 until May 10, 2006. He was last employed full-time as a recreational vehicle technician. He was discharged due to repeated negligence in the performance of his job.

On March 4, 2002, Mr. Folkerts was backing up in a golf cart when he struck a tool box, causing it to tip over. The tool box was 3.5 feet tall and 5 feet wide. On October 22, 2002, he was backing a vehicle up to plug in a shore cord when he struck the overhead door. He did not account for the trailer hitch as he was backing up. Mr. Folkerts inadvertently struck a co-worker on the head with a broom as he was taking it off the rack on June 23, 2003. There was no injury to the individual. Mr. Folkerts received a written warning on May 5, 2004 after he backed one motor coach into another, causing \$3,200.00 in damage. He was watching the rearview monitor inside the vehicle he was driving but did not see the other vehicle.

On September 16, 2004, Mr. Folkerts forgot to reassemble and reinstall a fan in a unit. On October 13, 2004, he was suspended for two days after he caused damage to a unit. The unit had a slide-out bedroom that extended from the body of the unit. Mr. Folkerts backed the unit through the overhead door without putting the slide-out room back. The accident caused \$500.00 in damage. Mr. Folkerts was not involved in another accident until May 1, 2006. On that date, he was suspended for three days after he struck the overhead door when backing a unit out. There was no damage to the unit, but the door sustained \$600.00 in damage. Mr. Folkerts failed to note that the overhead door was not completely up when he backed up. The ladder on the back of the unit caught the door as he was backing up.

The final incident that prompted the discharge occurred on May 10, 2006. Mr. Folkerts was directed to clean the ceiling of a unit. He checked with his supervisor to confirm that he had placed protective covering over all items that needed it. The solution he used to clean was made up by someone else and was contained in a spray bottle. He used the "mist" setting rather than the "stream" setting on the sprayer. After he completed the cleaning, Mr. Folkerts noted that his hand was wet. He checked the spray bottle and found that the nozzle was dripping. It was discovered that the solution that leaked from the spray bottle had penetrated the protective covering on items in the unit and caused them to be bleached out in spots. The bed spread, window coverings, carpet, couch, dinette chairs and pillows had to be replaced at a cost of approximately \$10,000.00. As a result of the incident, Mr. Folkerts was discharged.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Folkerts was separated from employment for any disqualifying reason. An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The employer's burden included establishing that the final act that triggered the discharge constituted misconduct within the meaning of the law. See 871 IAC 24.32(8). In the case at hand, the final incident that caused Mr. Folkerts' discharge occurred on May 10 when there was damage caused by a cleaning solution. Although he was the individual who performed the cleaning, the administrative law judge concludes that he was not at fault in causing the damage.

Mr. Folkerts' supervisor testified that Mr. Folkerts had covered all items that needed to be covered before starting the cleaning process. He did not know that the spray bottle he was using dripped. Even if he had noted the dripping while cleaning, it is unlikely he would have known that the drips would penetrate the protective covering on the items in the unit. A reasonable person would assume that the protective covering was for just that purpose, to protect against inadvertent spills or leaks. It is for the above reasons that the administrative law judge concludes that Mr. Folkerts was not culpable with respect to the incident of May 10. As such, it was not an act of misconduct.

The next most prior incident before May 10 was on May 1 when Mr. Folkerts struck the overhead door when backing a unit out. His negligence on this occasion did not represent a current act as is required for a misconduct disqualification. Because there was not a current act of misconduct in relation to the discharge date, the administrative law judge is not free to consider other past acts that might constitute misconduct. Inasmuch as there was no current act of misconduct, no disqualification is imposed. While the employer may have had good cause to discharge, conduct that might warrant a discharge from employment will not necessarily support a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa 1983). For the reasons stated herein, benefits are allowed.

DECISION:

The representative's decision dated June 1, 2006, reference 03, is hereby reversed. Mr. Folkerts was discharged by Winnebago Industries, but a current act of misconduct has not been established. Benefits are allowed, provided he satisfies all other conditions of eligibility.

cfc/cs