

**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**

**JOSH A PIERCE
2921 SHERIDAN ST
DAVENPORT IA 52803**

**OLSEN ENGINEERING LP
1100 E LECLAIRE RD
ELDRIDGE IA 52748**

**Appeal Number: 04A-UI-10500-AT
OC: 09-05-04 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, 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:

Josh A. Pierce filed a timely appeal from an unemployment insurance decision dated September 23, 2004, reference 01, which disqualified him for benefits. After due notice was issued, a telephone hearing was held October 12, 2004. Human Resources Manager Becky Meyer and Brad Miller participated for the employer, Olsen Engineering, LP. Although Mr. Pierce provided a telephone number at which he could be contacted, the number was answered by a recording. The administrative law judge left a message for the claimant to call immediately to the number listed on the hearing notice if he wished to participate. There was no further contact from the claimant. A written statement submitted by the claimant was admitted into the record as Exhibit A.

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: Josh A. Pierce was employed as a machine operator by Olsen Engineering, LP from June 7, 2004 until he was discharged September 7, 2004 for violating the company's harassment policy. On July 12, 2004, Mr. Pierce told a female co-worker that he wanted to "fuck her in the ass." Feeling uncomfortable at this comment, the co-worker reported it to her supervisor who passed it along to Human Resources Manager Becky Meyer and to Mr. Pierce's supervisor. He admitted making the comment but said it was in jest. He was warned that such behavior would not be tolerated. On September 3, 2004, Mr. Pierce left a threatening message on the co-worker's voice mail. She played the voice mail for Ms. Meyer. Mr. Pierce also acknowledged leaving the message. He was discharged for violating the company policy.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Mr. Pierce was discharged for misconduct in connection with his work. It does.

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 evidence establishes the existence of an anti-harassment policy, that Mr. Pierce violated the policy, that he was warned that the behavior would not be tolerated, and that he then threatened the co-worker. Misconduct is established. Benefits are withheld.

DECISION:

The unemployment insurance decision dated September 23, 2004, reference 01, is affirmed. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

tjc/tjc