

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

BRADLEY J BURGETT
1120 POLK BLVD APT 404
DES MOINES IA 50311

KRUEGER ENTERPRISES INC
1272 – 8TH ST
WEST DES MOINES IA 50265

Appeal Number: 05A-UI-03001-RT
OC: 02-20-05 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 for Misconduct

STATEMENT OF THE CASE:

The claimant, Bradley J. Burgett, filed a timely appeal from an unemployment insurance decision dated March 18, 2005, reference 01, denying unemployment insurance benefits to him. After due notice was issued, a telephone hearing was held on April 6, 2005, with the claimant not participating. The claimant did not call in a telephone number, either before the hearing or during the hearing, where any witnesses could be reached for the hearing as instructed in the notice of appeal. Brian Krueger, Manager, participated in the hearing for the employer, Krueger Enterprises, Inc. Although the employer did not call in a telephone number prior to the hearing, the employer called at 9:02 a.m., which left sufficient time to have the hearing so the administrative law judge called the employer's witness at 9:05 a.m. and proceeded with the hearing. The claimant did not call during the time that the hearing was being conducted.

FINDINGS OF FACT:

Having heard the testimony of the witness and having examined all of the evidence in the record, the administrative law judge finds: The claimant was employed by the employer as a full time night cashier from the latter part of July of 2004 until he was discharged on February 12, 2005. The claimant was discharged for improper conduct to customers. The claimant was given several written warnings and verbal warnings about his courtesy and relationship with customers but the claimant continued to ignore the warnings. Finally, on February 11, 2005, an employee of the employer's main customer, Groundskeeper, came in to the store and the claimant asked in an impolite way, "What do you want." This person complained to the employer and the claimant was discharged. The claimant's relationship and courtesy to customers was an ongoing problem. The employer had other customer complaints as well as employee complaints. The claimant received a written warning on December 16, 2004 and a second written warning on December 22, 2004 for these matters. The claimant also received two long verbal warnings where the employer's witness, Brian Krueger, Manager, discussed with the claimant his relationship with customers and his need for courtesy and customer service. Mr. Krueger also gave the claimant many short verbal warnings when he would notice an inappropriate behavior. Despite all of these warnings, the claimant's behavior never changed in relation to customers and he was discharged. There was no other reason for the claimant's discharge.

REASONING AND CONCLUSIONS OF LAW:

The question presented by this appeal is whether the claimant's separation from employment was a disqualifying event. It was.

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's witness, Brian Krueger, Manager, credibly testified, and the administrative law judge concludes, that the claimant was discharged on February 12, 2005. 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. Mr. Krueger credibly testified that despite numerous short verbal warnings and two long verbal warnings where the claimant's behavior was discussed and further two written warnings, all related to the claimant's conduct and behavior toward customers and courtesy to customers, the claimant's behavior never improved. The claimant's behavior culminated on February 11, 2005 when he was rude to a person from the employer's main customer, Groundskeeper, who came into the store. The claimant impolitely asked, "What do you want." This person complained to the employer and the claimant was discharged. The claimant's relationship and behavior and rudeness toward customers were an ongoing problem. The employer had also had complaints from other customers and employees. The claimant had received two long verbal warnings where his behavior was discussed as well as two written warnings and numerous short verbal warnings all as set out in the findings of fact. Under the evidence here and because of all of the warnings, and the employer's efforts to correct the claimant's behavior, the administrative law judge is constrained to conclude that the claimant's acts were deliberate acts constituting a material breach of his duties and obligations arising out of his worker's contract of employment and evince willful or wanton disregard of the employer's interests and are, at the very least, carelessness or negligence in such a recurrence, all as to establish 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.

DECISION:

The representative's decision dated March 18, 2005, reference 01, is affirmed. The claimant, Bradley J. Burgett, is not entitled to receive unemployment insurance benefits until or unless he requalifies for such benefits, because he was discharged for disqualifying misconduct.

sc/pjs